

BASELINE

Diagnosis of the status of the processes of nomination, certification, and selection of supreme court justices and attorneys general of the countries of the Northern Triangle





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Asociación para una Sociedad más Justa - ASJ

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A light blue map of Central America is visible in the background, showing the outlines of El Salvador, Guatemala, and Honduras. The map is centered on the page, with the title 'INTRODUCTION' overlaid on it.

INTRODUCTION

Through this document, it is intended to collect the key indicators on the relevant aspects of the processes of nomination, designation, selection or election of senior officials of the institutions of the justice system in the countries that make up the Northern Triangle of Central America (El Salvador, Guatemala and Honduras). The following elements that have a direct impact on the appointment processes of the courts and the prosecutor's office are analyzed: a) whether or not there is a specific regulation that regulates the selection process and the delimited stages; b) the weaknesses and strengths of each process; c) what 're the mechanisms of control and investigation of the profile of the candidates; d) what ethical aspects are taken into consideration to determine if an applicant is eligible; e) if psychometric tests are carried out and what influence they have within the election process; f) the obligation to make a declaration of conflicts of interest; g) which key actors are involved in the process; and, lastly: g) relevant statements by the rapporteur for judicial independence on the process of electing judicial officials.

The objective of this analysis is to have the necessary information to be able to make a proposal for reforms or modification of the processes, in order to strengthen the institutions of justice in the three countries included in the study. It is important to point out that each country has a different context and specific regulations for the appointment of officials in the justice system; however, this study seeks to identify common challenges and visualize the differences in the processes, to serve as a reference and facilitate common learning.

The study collects relevant information to establish the problems in each country related to the election of high-level officials in justice institutions, to later define the actions that civil society can promote, in order to strengthen the processes, transparency, justice and accountability in the countries covered by this analysis. It is also intended that the information generated be used for educational purposes, socialize the problem with the population through awareness campaigns, and thus achieve an impact on the political will of decision makers.

Socio-political context



The sociopolitical context of the three countries that make up the Northern Triangle is complex, due to the fact that they are going through a stage of political polarization, of groups that promote division and that directly affect the appointment of high-ranking officials in the justice system. The appointments of high authorities have a high political component that directly affects the independence of the courts and the autonomy of the Attorney General's office.

The rule of law in Central America faces enormous challenges. In particular, efforts against impunity in El Salvador, Honduras, and Guatemala, backed by the international community, failed in the fight against kleptocracy and transnational criminal organizations. Due to the high rates of corruption and impunity, the international community supported the creation of independent investigation programs, such as the International Commission Against Impunity in Guatemala (CICIG), in Guatemala, and in Honduras the Support Mission Against Corruption and Impunity in Honduras (MACCIH), which allowed many cases of great corruption to come to light and the corresponding criminal proceedings to be initiated. In El Salvador there was also an attempt to establish an International Commission against Impunity in El Salvador (CICIES), but the effort was unsuccessful. Despite the fact that various efforts have been made to strengthen justice

institutions in the region, there are no guarantees that justice is independent, or that the judges act impartially, since in most cases, the punishments against those who have been accused in cases of grand corruption do not respond to the seriousness of the acts committed, the processes suffer unjustifiable delays and sometimes the trials are paralyzed. Consequently, convictions against politicians, officials or influential people remain the exception.

In each of the Central American countries there are specific contexts that have a direct impact on the functioning of justice institutions. However, there is a similar problem in El Salvador, Honduras and Guatemala, countries where justice institutions lack the trust of citizens, since it is perceived that judicial decisions are the result of interference by external groups, and that in some cases justice favors interest groups or benefits those accused of corruption or members of organized crime. Officials (judges and prosecutors) who fight against corruption are vulnerable to pressure from groups that promote corruption and seek impunity, for various reasons, one of them because the appointments have a high component from political sectors, groups of power and in some cases of criminal organizations. The guarantees to give stability to the positions are not complied with either; recently there have been cases of dismissal of senior officials in the courts. Another reason is the issue of personal security or political persecution to which justice operators are subject, as in Guatemala. In the three countries covered by this study, the processes for appointing judicial officials within the justice system suffer from multiple weaknesses in their institutional design. To the fragility of the institutions is added the political influence in the appointments of the positions of judicial officials. A key challenge is to shield the judicial sectors from undue interference by elites and criminal interference in the different processes of electing senior officials in judicial sector institutions.

Corruption rates in these three countries are among the highest in the continent. The Corruption Perception Index that Transparency International publishes each year estimates that by 2021 Guatemala will rank 150th out of 180 countries, with a score of 25/100 points, positioning itself as the fifth nation with the highest corruption perception index. Honduras ranks 157th out of 180 countries, with 23/100 points, while El Salvador ranks 115th out of 180 countries, with 34/100 points.¹

On the other hand, the Rule of Law Index, which weights aspects such as the limits to the powers of the State, the absence of corruption, open government, respect for fundamental rights, security and the ability to enforce laws, in 2021 rated the Northern Triangle countries among the worst in the region.²

Of the three countries of the Northern Triangle, Honduras obtained the lowest score, with 39 points in total, ranking 126th out of 139 countries on average, as well as in civil justice. However, the criminal justice rating dropped significantly to 136th out of 139 countries, making it the fourth lowest rated country.

Guatemala obtained 44 points, ranking 109th out of 139 countries in Rule of Law, while in civil justice the country ranks 134th out of 139 countries, which reflects that it is in the queue for resolving civil conflicts. In matters of criminal justice, it ranks 127th out of 139, which means that, in addition to serious corruption problems, Guatemala does not have a strong rule of law that guarantees stability for the population, nor for investors.

1 | Transparency International. Corruption perception index 2021. <https://www.transparency.org/en/cpi/2021>

2 | World Justice Project. Rule of Law Index (Índice de Estado de Derecho) 2021. <https://worldjusticeproject.org/rule-of-law-index/>

As for El Salvador, it has a rating of 48 points, which places it in the range of 95 out of 139 countries. In civil justice it ranks 76th out of 139 countries, and in criminal justice it ranks among the countries with the lowest rating, ranking 125th out of 139 countries.

EL SALVADOR

El Salvador is currently in a complicated sociopolitical context, given that President Bukele's party – Nuevas Ideas – won a qualified majority in the Legislative Assembly since May 1, 2021,³ which has allowed the official party to take control of the second-tier elections of officials, as in the case of the Judiciary of the Supreme Court of Justice (CSJ) and the head of the Office of the Attorney General of the Republic (FGR).

A relevant fact that demonstrates the influence of politics on justice is that in the first plenary session that was held for the inauguration of the 2021-2024 legislature, they proceeded, totally unconstitutionally and without following due process, to remove the five justices elected for the period 2018-2027, including three male justices and one female justice from the Constitutional Chamber. This decision was approved by a qualified majority, as indicated in art. 186 of the Constitution, but due process was not followed, since the legal grounds on which the decision was based were not stated, nor was the right to a hearing guaranteed to the affected persons. Two months later, on June 30, 2021, the Legislative Assembly proceeded to elect five new justices, as planned, but through a procedure that did not favor a decision based on the merit of the candidates, but rather on their potential or obvious affinities with the majority party in the Legislative Assembly. With that election, the control of the three state bodies by the official party was consolidated, since Nuevas Ideas has been able to elect ten of the fifteen Justices of the Supreme Court of Justice; that is to say, that the system of checks and balances and the real separation of powers typical of a democratic and constitutional State of law was annulled.

GUATEMALA

In the case of Guatemala, the situation is also very complex. The power groups that seek impunity have managed to co-opt the institutions of justice, as well as those of the other powers of the state. These are illicit political-economic elites who seek to take control of the State to prevent their members from being punished for criminal acts of various kinds. As a consequence of the work of the International Commission against Impunity in Guatemala (CICIG) and the Special Prosecutor's Office against Impunity (FECI), various investigations of grand corruption cases were presented, in which these groups are involved. At the moment in which the judicial processes begin, the different sectors opposed to CICIG unite in what is commonly known in the country as the corrupt pact. These actors develop a strategy that aims to do the following:

1. Revenge against prosecutors, judges, former presidents and investigators who fought against corruption in the days of the International Commission against Impunity in Guatemala.
2. Keep the political-economic system of the country captured, in order to continue with illicit enrichment.
3. Keep justice institutions captured to guarantee impunity and repress any opposition

3| Martínez, L. (2021). "Who are the members of the new Legislative Assembly of El Salvador?", El Salvador.com, 05/05/2021, available at <https://www.elsalvador.com/noticias/nacional/asamblea-legislativa/834750/2021/> (consulted on 10/20/2021).

The election of the Attorney General, along with the renewal of the Justices of the Supreme Court of Justice and the Court of appeals, pending since 2019, are critical issues for the rule of law in Guatemala. There are serious indications of corruption in the election processes of high public officials in the justice system, among them, two paradigmatic cases known as Parallel Commissions I and II, raised by CICIG and FECI, which reflect the anomalies in the appointments of the Supreme Court in 2014 and 2019.

This situation has provoked very strong pronouncements from the international community. In recent years, the United States Department of State has included senior officials of justice institutions in the lists of corrupt officials, including the Attorney General, who ends its mandate in April 2022.

HONDURAS

Recently in Honduras there has been a change of government, after twelve continuous years of the National Party (PN). The current context of political change generates positive expectations in the population and the international community. However, this does not imply that the transition is without problems. Before the inauguration of President Xiomara Castro, a conflict arose in the Legislative Power, during the election of the President of Congress. Simultaneously, in two different ceremonies, two presidents of the legislative body were elected: on the one hand, in the Congress building, members of congress of the Libertad y Refundación (Libre) Party loyal to President Castro appointed Luis Redondo, of the Salvador de Honduras (PSH) Party; while other congressmen and congresswomen, also from the Libre party, together with other legislative groups, while meeting in a social center, elected Jorge Cálix, which demonstrates the polarization of the country. Finally, they reached an agreement and the legislative power was left in charge of Congressman Luis Redondo, as president. Currently, there is no majority in the National Congress, which means that in order to advance the legislative agenda and appoint the officials of the justice institutions, they must reach agreements. The new configuration of Congress will have a direct effect on the election of the Attorney General and the Supreme Court of Justice.

It is necessary to take into account the background related to the election of the Attorney General of the Nation, held in February 2022, without having resolved the conflict within the Legislative Branch. The motion was presented by congressman Rafael Sarmiento to elect the head of the PGR, a motion that was not discussed and only put to a vote. This is an atypical election, since in addition to the questions of legality that fell on Congress, the two elected candidates do not meet the requirements established by the Constitution of the Republic in article 309, which establishes that both must be lawyers and notaries.

The istment of President Juan Orlando Hernández was marked by major cases of corruption, the most emblematic being the embezzlement of the Honduran Social Security Institute, from which around seven billion lempiras were extracted. The cases of corruption provoked the rejection of the population and massive protests against the government, as a result of which the government requested the support of the Organization of American States for the creation of an International Anti-Corruption Commission. In 2016, the Support Mission Against Corruption and Impunity was installed in Honduras, which was valid for four years and contributed to the investigation of emblematic cases of corruption.

Attorney General Óscar Chinchilla has been questioned by some social and political sectors of the new government, due to his silence in emblematic cases of corruption and drug trafficking. The panorama for the election of the Attorney General and Deputy Attorney General for the period 2023-2028 is still not clear, considering recent history, in which the positions of senior officials of the Public Ministry have been distributed between the National and Liberal Party, obtaining the Attorney General's Office the government party and the opposition party assigning someone to the position of Deputy General Attorney. In the current Congress, the Salvador de Honduras and Libre Party, despite having a majority, do not have the 86 votes to elect the heads of the Public Ministry without negotiating with the National and Liberal Parties, with whom at the moment they do not have a very good relationship.

Regulation on the election processes of senior officials in the Judicial system

EL SALVADOR

The process of electing the Justices of the Supreme Court in El Salvador is the result of a constitutional reform approved prior to the signing of the 1992 Peace Accords. The requirements to occupy the position of Attorney General were also established. Subsequently, ordinary laws were developed, which establish norms for the judicial and the Attorney General's election. The Constitution establishes the following as requirements for aspiring justices:

Art. 176.- *“To be a Justice of the Supreme Court, the following is required: to be Salvadoran by birth, of the secular state, over forty years of age, a lawyer of the Republic, of notorious morality and competence; having held a Judiciary of Second Instance for six years or a Judiciary of First Instance for nine years, or having obtained authorization to practice law for at least ten years before his election; be in the enjoyment of the rights of a citizen and have been in the six years prior to holding office”.*

The general process for the election of the CSJ is regulated in article 186 of the Constitution, regarding the Judicial Career, and establishes that the Justices of the CSJ must be elected by the Legislative Assembly for a period of nine years, and that the Court will be renewed by third parties every three years. For the election, the favorable vote of at least two thirds of the elected congress members is required. It is also indicated that the election process requires the National Council of the Judiciary to draw up a list of candidates for the CSJ, half of which come from bar associations and the other half from civil servants with judicial careers.

The Constitution also determines that the CSJ must have a Constitutional Chamber, which is made up of five justices elected by the Legislative Assembly. At the same time, it points out that each time the Assembly elects justices, the president of the Chamber must be elected, who will in turn be the president of the CSJ and of the Judicial Organism (article 174 const.)

In addition to the constitutional norms indicated, the process of electing justices to the CSJ in El Salvador is regulated in ordinary laws, these being the following.

Law of the National Council of the Judiciary
Judicial Organic Law
Regulation of the Law of the National Council of the Judiciary
Manual for the selection of justices and judges of the CNJ.
Internal Regulations of the Legislative Assembly
Special Regulations for the election of candidates for the CSJ chosen by lawyers, drawn up every three years by the board of directors of the Federation of Lawyers of El Salvador, and some instructions related to election day, drawn up by each board of directors on duty.

The Constitution establishes the rules for the election of the Attorney General. Article 192, paragraphs 1 and 3, states that the election corresponds to the Legislative Assembly by qualified majority. As requirements, it indicates that the same qualities are required as to be a magistrate of the second instance chambers, these being the following: *to be Salvadoran, of the secular state, over thirty-five years of age, a lawyer of the Republic, of notorious morality and competence ; have served a Judiciary of First Instance for six years or have obtained authorization to practice law for at least eight years prior to his election; be in the enjoyment of the rights of citizenship and have been in the six years prior to holding office (art. 177 const.).*

The constitutional norms that regulate the election of the Attorney General are complemented by three articles of the Internal Regulations of the Legislative Assembly (RIAL), arts. 98-100.

GUATEMALA

The election of high public officials of the justice system is contemplated in the Political Constitution of the Republic of Guatemala, which establishes the procedures and requirements for the election of the Supreme Court magistrates, the magistrates of the Constitutional Court and the Attorney General.

To occupy a position as an official in the judiciary, the Constitution states that they must be Guatemalans of origin, of recognized honorability, be in the enjoyment of their citizen rights and be lawyers members of the Bar Association (art. 207 const.) In the specific case of Justices of the CSJ, it is required to be over forty years old, and to have served a full period as a Judge of the Court of Appeals or of the civil courts that have the same quality, or to have practiced the legal profession for more than ten years (art. 216 const.). To occupy the position of Attorney General, the same requirements are required as to be a Justice of the Supreme Court. Likewise, the Constitution indicates that the appointments of public officials must attend only to reasons based on merits of capacity, suitability and honesty (article 113 const.)

The election of the members of the Supreme Court of Justice and the Attorney General is carried out through the process of Nomination Commissions, bodies in charge of making a prior filter to the candidates for certain public positions, so that later the political power appoints them, created in 1993 so that the appointments of officials in justice institutions would be free from political influence.

The appointment of the Justices of the Constitutional Court entails a different process, which establishes elections in the Bar Association and the San Carlos University, as well as appointments by the three powers of the State.

Election of officials through Nominating Commissions

As indicated above, the Justices of the Supreme Court of Justice and the Attorney General's Office are elected through a process known as Nominating Commissions, which is regulated by two laws: the Nominating Commissions Law (Decree 19-2009) and the Law to Guarantee the Impartiality of the Nominating Commissions (Decree 16-2005). In addition, other specific laws must be taken into consideration for each institution, such as the Law of the Public Ministry for the election of the Attorney General, and the Law of the Judicial Career for the election of justices to the CSJ.

HONDURAS

In accordance with the provisions of the Political Constitution of 1982 of Honduras, the Judicial Power is made up of the Supreme Court of Justice, the courts of appeals and the civil courts. The Supreme Court is made up of fifteen Justices who make up four chambers: Constitutional, Civil, Criminal, and, Labor-Administrative Litigation. The election of the Justices of the Supreme Court is a second degree election⁴ assigned to the National Congress, as established by the Constitution.

The process of electing Justices of the Supreme Court is regulated in the Constitution of the Republic. A new law was also recently approved, called the Special Law for the Organization and Functioning of the Nominating Board for the Proposition of Candidates for Justices of the Supreme Court of Justice.

According to the Honduran Constitution, the Justices of the Supreme Court of Justice will be elected by the National Congress with the favorable vote of two thirds of all its members. In other words, 86 votes of the 128 available are required to be elected from a list of candidates of no less than three for each of the Justices to be elected. The fifteen candidates for Justices are selected by secret ballot of the members of congress. Subsequently, once elected, the Justices must choose who will hold the position of president of the Supreme Court of Justice, by a two-thirds vote in a plenary meeting.

The Constitution regulates in article 312 that the organizations that make up the Nominating Board must be summoned by the president of the National Congress, no later than October 31 of the year prior to the election of the magistrates. It also indicates that the Board must submit the proposal for the list of 45 candidates, three for each of the Justice positions, to the Permanent Commission of the National Congress on January 23 at the latest, so that Congress can hold the election on January 25. In the event that the Nominating Board does not present the proposals, the National Congress has the power to carry out the election by qualified majority of all its members. It is important to highlight that constitutional article 312 can be related to article 22 of the Special Law, which determines that the list of candidates for must be sent to the National Congress in the first fortnight of January of the year of election of the Justices.

According to the Constitution, the election of the Attorney General and the Deputy corresponds to the National Congress (article 205 const.). In addition, the requirements that must be met by those who apply for the position of Attorney General are clearly established: "To be Attorney General of the Republic and Deputy Attorney General, the following requirements must be met: 1) Be Honduran by birth; 2) Citizen in the enjoyment of their rights; 3) Lawyer duly registered, with distinguished professional experience of more than ten (10) years or having worked as a judge in the criminal area for at least ten (10) years; 4) Over forty (40) years old; and, (5) Conduct and moral solvency duly proven."⁵

4| Second degree election or indirect suffrage is one in which voters elect representatives who, in turn, are the electoral body that must elect the corresponding public office.

5| Constitution of the Republic of 1982, Decree 131, chapter V, section I, article 233 par. 2, viewed at: [http://www.poderjudicial.gob.hn/CEDIJ/Documents/Constituci%C3%B3n%20de%20la%20Rep%C3%BAblica%20\(febrero%202019\).pdf](http://www.poderjudicial.gob.hn/CEDIJ/Documents/Constituci%C3%B3n%20de%20la%20Rep%C3%BAblica%20(febrero%202019).pdf)

Description of the election processes by stages

EL SALVADOR

Judiciary of the Supreme Court of Justice (CSJ)

According to Salvadoran regulations, the process of electing Justices to the Supreme Court must begin at least 180 days before the new Justices take office. The process involves several stages and involves multiple actors.

Preselection of candidates for Justices of the Supreme Court

The first stage consists of a pre-selection of candidates for Justices by two separate entities: the Federation of Bar Associations of El Salvador (FEDAES) and the National Council of the Judiciary (CNJ). In any case, only candidates who meet the following requirements established by the Constitution can participate: to be Salvadoran by birth, to be over 40 years old, to be from the lay state, of well-known morality and competence, as well as to have been authorized to exercise the legal profession for at least 10 years before the election, or have served as a judge of second instance for six years, or a judge of first instance for eight years. (Art. 176 constitution)

In the case of FEDAES, the country's lawyers elect 15 candidates by direct and secret vote, from people proposed by the different bar associations. This process is carried out before the selection made by the CNJ, so that in the event that there are candidates who are not elected in the vote of the lawyers, they can apply in the process carried out by the CNJ. It is important to point out that in El Salvador there is no compulsory association of the union, so there is no one sole bar association, but several associations.

Separately, the selection process in charge of the National Council must also select 15 candidates from a list made up of all the lawyers who have expressed an interest in participating and who meet the constitutional requirements. All interested eligible attorneys may participate in this process. The CNJ verifies compliance with the constitutional requirements, as well as those that have been added through jurisprudence. Once the minimum requirements have been verified, the CNJ evaluates the candidates, and then submits the selection of the best 15 to a plenary vote.

This phase is regulated by the CNJ Law and its regulations, as well as by the selection manual for justices and judges prepared by the CNJ, and by specific constitutional jurisprudence on how to carry out the process.⁶ The stage concludes with the integration of the FEDAES list with the CNJ list, which is sent to the Legislative Assembly.

⁶ | Unconstitutionality 94-2014 of April 8, 2015.

The Legislative Assembly Elects the Justices for the Supreme Court

As the two lists are integrated, the CNJ sends it to the Legislative Assembly to proceed to the second-tier election. Every three years the election of five regular Justices and five alternates is held. To be elected, it is necessary to have the support of a qualified majority of 56 votes, which represents two thirds of the members of the assembly. In the Legislative Assembly, any party or coalition with more than 28 votes has blocking capacity, since it is made up of 84 congressmen and congresswomen.

This last stage is regulated by article 1 of the CNJ Law, and article 3 of the RIAL, but has been the subject of abundant jurisprudence that has been specifying and adding stages or acts, through several unconstitutionality rulings on second-tier elections and specifically on the election of the Justices of the Supreme Court.⁷

Attorney General's Office (FGR)

In El Salvador, the process of electing the Attorney General is very simple. In accordance with the provisions of the Constitution, the election of the Attorney General and the other officials that make up the Public Ministry must be elected by the Legislative Assembly by a qualified majority of two thirds of the elected members (article 192 const.).

Therefore, it essentially consists of an open call so that all interested persons, who meet the requirements established in article 177 of the Constitution, can express their interest by means of a letter and accompany their resume (art. 98 RIAL). The following steps are totally optional for the Assembly, except for the obligation of the Political Commission of the Legislative Assembly to issue an opinion on the proposed candidacy (art. 99 RIAL) and the obligation of the plenary legislature to elect by qualified majority (art. 192 const.).

GUATEMALA

The process of electing high-ranking judicial officials in Guatemala is complex and includes different phases. In the first phase, the Nominating Commission defines the list of candidates and in the second the election is held. The Congress of the Republic elects the Justices of the Supreme Court of Justice and the president elects the Attorney General.

- Integration of the Nomination Commission
- Preparation of the candidate profile and grading table
- Public call
- List of participants
- Interviews
- Blemishes or impediments
- File evaluation and listings integration
- Presentation of objections

7| In chronological order, the unconstitutionality rulings directly applicable to this election are the following: 19-2012 and 23-2012, both of June 5, 2012; 77/97-2013, of October 14, 2013 and 56-2016, of November 25, 2016, which have been shaping the procedures, giving content to certain concepts such as "notorious morality and competence" and specifying the relative prohibitions people with partisan political ties to participate in this election, among others.

Election of the Supreme Court of Justice

In the election of Courts, the Judicial Career Law must also be taken into consideration. During the exercise of the position, the norms established in the Civil Service Law of the Judicial Organism are also applied. The Supreme Court is made up of 13 Justices, from whom a president is elected

The Constitution indicates that to be elected as a Court Justice it is necessary to be of Guatemalan nationality, of recognized honorability, to be in full enjoyment of citizen rights and to be a collegiate lawyer (member of the bar association) (article 207 of the Constitution). In addition, they must be at least 40 years old and have served a full term as an appeals judge (five years) or have practiced law for more than 10 years (Article 216 Constitution).

The Nominating Commission that directs the election of the Supreme Court is made up of a representative of the rectors of the universities, the deans of the Faculties of Law or Legal and Social Sciences (currently 12 universities have a Faculty of Law), an equal number of representatives elected by the General Assembly of the Bar Association and an equal number of representatives elected by the Judges of the court of appeals (article 215 const.).

To be able to integrate the list that is delivered to Congress, the vote of two thirds of the commissioners is required.

Election of the Attorney General

The process that entails the designation of the Attorney General is defined in the Constitution of the Republic of Guatemala and in ordinary laws; the Law of Nomination Commissions (Decree 19-2009) and the Organic Law of the Public Ministry (Decree 40-94), which establishes the activities and functions of the prosecution.⁸

The Commission for the Nomination of Attorney General and head of the Public Ministry is chaired by the president of the Supreme Court of Justice and the Judicial Branch. It is also integrated with the president of the College of Lawyers and Notaries; the president of the Court of Honor of the same College; and by the deans of the faculties of law or legal and social sciences legally established in the country (article 251 const.).

Currently there are twelve universities that have a faculty of law. Therefore, the deans of these houses of study are those who participate in the Nomination Commissions.

8| Artículos 9, 10, 11, numeral 8, 12, 17, 19 de la Ley Orgánica del Ministerio Público.

Formation of the Nominating Commission for the election of Attorney General:

President of the Supreme Court of Justice (who presides)
President of the Board of Directors of the College of Lawyers and Notaries of Guatemala.
President of the Court of Honor CANG
Dean of the University of San Carlos of Guatemala -USAC2. University of the Isthmus
Dean of the Francisco Marroquín University
Dean of the Mariano Gálvez University of Guatemala
Dean of the Mesoamerican University of Guatemala
Dean of the Pan American University of Guatemala
Dean of the Rafael Landívar University
Dean of the San Pablo University of Guatemala
Dean of the Rural University of Guatemala
Dean of the Regional University
Dean of the University of the West
Dean of the da Vinci University of Guatemala.

Once the Nominating Commission is formed, the same process is followed as for the election of Supreme Court Justices, which is defined in the Nominating Commissions Law.

HONDURAS

The election of Justices for the Supreme Court of Justice and the election of the Attorney General is carried out through a process that includes two stages. The first stage of pre-selection of candidates, through a nominating/proposing board, the entity responsible for preparing the lists that are subsequently delivered to the National Congress so that the second stage of the election itself can be carried out. The Constitution indicates the members of the Nominating Board for the Supreme Court, but it does not indicate it in the case of the Attorney General. This is defined in the Law of the Public Ministry.

Election of Justices for the Supreme Court of Justice la CSJ

The Constitution states that it is the president of Congress that must convene the organizations that make up the Nominating Board no later than October 31 of the year prior to the election of CSJ Justices. The Board must prepare the list of candidates and deliver the proposal to the Permanent Commission of the National Congress⁹ January 23 at the latest. The Full Congress must hold the election on January 25. The Supreme Court Justices are elected with a qualified majority (article 312 const.). The Justices are elected for a term of seven years and can be re-elected (article 314 const.).

9] Constitution of the Republic of Honduras. 1982. "Article 207. The board of directors of the National Congress, before closing its sessions, will designate from among its members, (9) nine proprietary members and their respective alternates who will form the Permanent Commission of the National Congress.

Organic Law of the Legislative Power; Decree 363-2013: "Article 26: "Once the sessions of the National Congress are finished, the Permanent Commission must meet within three (3) business days following the last session, which is made up of the President of the National Congress, a Vice President, the First Secretary, and proprietary and alternate members. Once the Permanent Commission is elected, it must establish the schedule of meetings and the mechanisms to start the responsibilities that correspond to it by law and its decisions are made by a simple majority of its members."

The nominating board that prepares the lists of candidates for Justices of the Supreme Court is integrated in accordance with the provisions of article 311 of the Constitution with the following delegates:

A representative of the Supreme Court of Justice elected by the favorable vote of two thirds of the Justices;
A representative of the Bar Association, elected in an assembly;
The National Human Rights Commissioner;
A representative of the Honduran Council of Private Enterprise (COHEP), elected in Assembly;
A representative of the faculty of the Schools of Legal Sciences, whose proposal is made through the National Autonomous University of Honduras (UNAH);
A representative elected by the Civil Society organizations; and,
A representative of the Confederations of Workers

Regarding the composition of the Nominating Board, the Law establishes that between July 15 and July 31 of the year prior to the election of the new Supreme Court of Justice, the National Congress will summon through the Official Gazette the organizations listed in the Article 311 of the Constitution of the Republic to begin the process of electing their representatives who will make up the Nominating Board.¹⁰ These organizations will have until August 30 of that same year to form the board and submit to Congress the list of members that will make up the nominating board, with their respective alternate.¹¹ Once the list of the nominating board has been received, within the first 15 days of September, the president of the National Congress will summon the nominees to integrate the board to proceed with their swearing-in and installation. Upon being sworn in, the members of the Board will proceed to elect two secretaries, which will be recorded in the minutes of the National Congress. In accordance with the provisions of the Constitution, this process must conclude no later than October 31st.

Candidates Pre-Selection Stage

Previously, the Law that regulated the organization process of the Nominating Board was the Organic Law of the Nominating Board for the Election of Candidates for Justices of the Supreme Court of Justice, which dated from the year 2001. However, on July 20 of the year 2022, the Special Law for the Proposition of Candidates for Justices of the Supreme Court of Justice (hereinafter, Special Law of the CSJ nominating board) was published in the Official Gazette, which has the purpose of regulating the work of the nominating board . This, after the regulation of the law, creation of technical documents, suitability profiles, as well as the execution of each one of the stages of the selection process of the candidates for justices for the CSJ, proceeds to send to the National Congress a list no less than 45 candidates for Justices no later than January 23; however, in the new Special Law it is mentioned that the maximum term is the first fortnight of the month of January in the year of the election. From these candidates, the National Congress will elect the 15 Justices who will become part of this power of the State, in accordance with the Constitution of the Republic of Honduras. The principles that must be observed in the

10| Resolution 1-2015 of the Nominating Board for the election of the Justices of the Supreme Court of Justice Article 9. Available at : <https://portalunico.iaip.gob.hn/assets/docs/mas/GACETA%20JUNTA%20NOMINADORA.pdf>

11| Special Law of the Nominating Board for the CSJ <https://www.expedientepublico.org/wp-content/uploads/2022/07/20-DE-JULIO-2022-GACETA-No.-35980.pdf>

nomination process are: compliance with the law, equality and non-discrimination, gender equity, publicity, transparency, accountability, independence and objectivity, punctuality and respect for established deadlines, ethics, responsibility and due diligence.

The procedure to qualify the applicants and prepare the list of candidates is not defined in the Law. Consequently, each nominating board has the power to define the procedure that will be developed during the stage that corresponds to it in relation to the election of justices, once integrated and sworn. As an example, the procedure designed and developed by the Nominating Board in 2015 for the election of the Supreme Court of Justice for the period 2016-2023 through resolution 01-2015 is described.¹²

Deadline to submit proposals for candidates for CSJ Justices

Article 4 of the Special Law of the CSJ nominating board determines that the Nominating Board is a temporary, collegiate, deliberative and autonomous ad hoc body, whose main function will be to make up a list of no less than 45 candidates for Justices of the Supreme Court of Justice to propose to the National Congress, with a seat in the capital of the Republic.¹³ It is up to this entity to prepare a schedule with the stages of its work and to issue a regulation of the new Special Law; Likewise, during the first fortnight of October, they will issue a general call for lawyers who comply with article 309 of the Constitution and article 15 of the Special Law of the CSJ nominating board to present their self-application. Subsequently, these self-applicants are submitted to the selection process and criteria of the Nominating Board. Finally, they deliver the list of candidates to the National Congress, and must submit a report in the first half of January of the year in which the Justices are elected, which will be published in the Official Gazette.

Evaluation of Profiles

Part of the process of the Nominating Board is the evaluation of the self-proposals presented directly by the lawyers, in order to verify if they have presented all the required documentation and if they meet the requirements indicated in the Constitution and the Special Law of the nominating board.

Publication of the list of pre-candidates and receipt of objections and/or complaints with due justification

The Nominating Board publishes the list of pre-candidates so that within the period established and in the places defined, any person who considers that the applicant does not meet the legal requirements to exercise the position of Justice, submits complaints and cross out the candidacy before the Nominating Board, attaching the documents it deems pertinent and that may be verifiable.

If complaints are received against a candidate, the Board will inform the applicant so that he can proceed to formulate the defenses; if he deems it convenient, he may request a hearing to make his allegations. If he does not do so, the right to present his defenses will be deemed null.

¹² | Resolution 1-2015 of the Nominating Board for the election of Justices of the Supreme Court of Justice available at : <https://portalunico.iaip.gob.hn/assets/docs/mas/GACETA%20JUNTA%20NOMINADORA.pdf>

¹³ | See more in article 4 of the Special Law on the Organization and Functioning of the Nominating Board for the Appointment of Justices to the Supreme Court of Justice.

Review, investigation and verification of requirements

When the challenges or complaints are resolved, the applicants' requirements are verified. The Board will evaluate them according to the technical table of qualifications approved by the board, which must facilitate an objective weighting of the merits and objective capacity of the applicants.

Trust tests (Psychological and Psychometric tests)

The Board also has the power to request the application of trust tests, as established by the General Law of the Superintendency for the application of trust evaluation tests.

Candidate Interviews

Article 18 of the Special Law of the CSJ nominating board determines that, once there is a preliminary list with the applicants who have successfully passed the previous phase and with the highest qualifications, these professionals will be summoned to appear before the Nominating Board, to be interviewed in public on key topics or issues that could help the Board to make its list according to the highest standards of professional, moral and personal suitability.

Selection criteria

The Special Law of the CSJ nominating board, in its article 19, already establishes the percentages of evaluation of the final qualification, divided as follows: 25% valuing integrity, good professional conduct, union esteem; 20% will qualify ethics, and 55% will correspond to suitability and capacity.

Finally, the nominating board will proceed to select the 45 candidates who, in its opinion, meet the requirements of suitability and ability to occupy the most important position in the justice sector. This list must be sent together with the resumes of the candidates for the National Congress, no later than January 23 of the year of the election of Justices for the Supreme Court of Justice and January 15 in accordance with the Special Law of Organization and Functioning of the nominating Board for the Proposition of Candidates for Justices of the Supreme Court.

Election stage by Congress

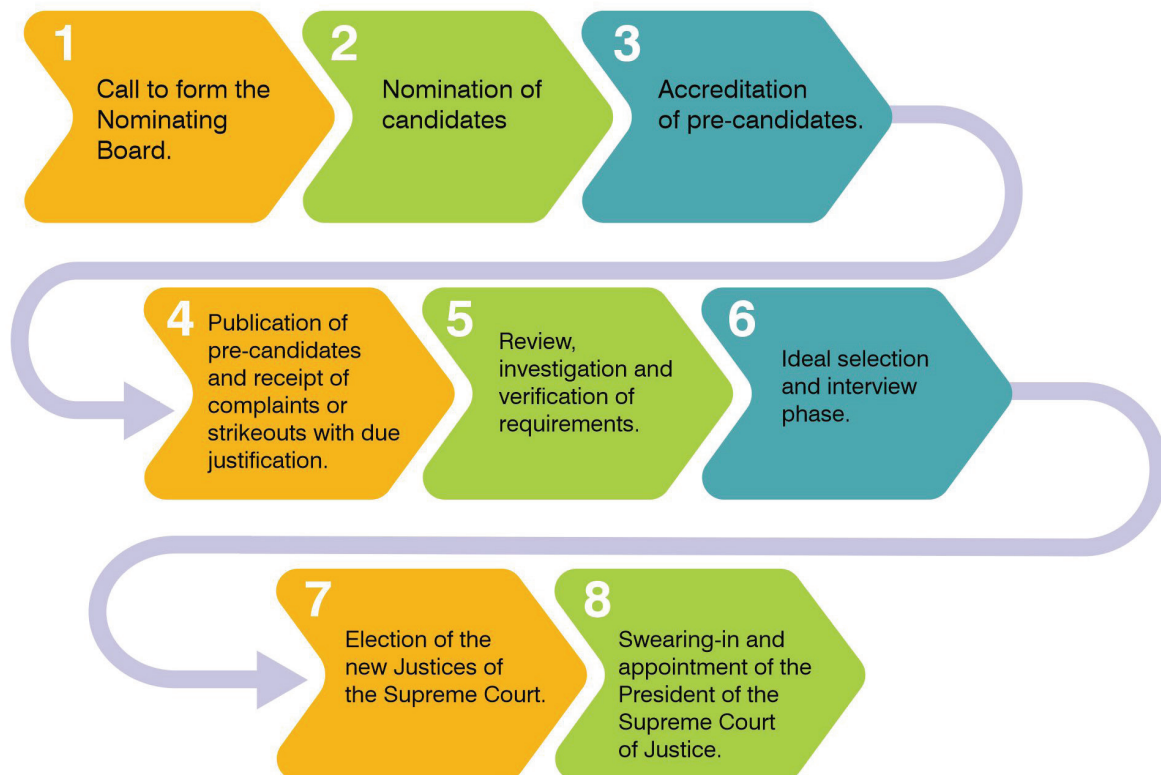
Upon receiving the list, the president of the National Congress appoints a special multiparty commission to proceed to form a list of no less than three candidates for each Justice position. When the proposal is ready with all the candidates to Justices to be elected, it will be put to a vote in plenary session on January 25 of the year of the election. If it has the support of 86 votes, it will be approved, and the 15 elected Justices will be summoned to proceed with their swearing-in.

The Constitution establishes in article 311 that, in the event that the list of 15 Justices presented to the plenary does not reach the 86 votes required for its approval, direct and secret voting will be carried out to individually elect the Justices as many times as necessary, until 15 candidates get 86 votes.

Critical dates of the election process of the Justices of the Supreme Court

DATE	STAGE
Between July 15 and 31 of the year prior to the election	The organizations involved are called to elect their representatives on the Nominating Board.
From August 1 to 31 of the year prior to the election	The organizations that are part of the Nominating Board must elect their representatives and accredit them before the National Congress of the Republic. The president of the national congress will summon the nominees to integrate the board to proceed with their swearing-in and installation.
Between September 1 and 15 of the year prior to the election	The president of the National Congress will summon the nominees to integrate the board to proceed with their swearing-in and installation.
January 15 of the year of the election	The nominating board will send the list of no less than 45 candidates together with the candidates' resumes to the Permanent Commission of the National Congress.
January 25 of the year of the election	Congress will submit to a vote in plenary a list of 15 candidates to occupy the position of Justices of the Supreme Court of Justice.

Election process of the Justices of the Supreme Court



Election of the Attorney General

The election of the Attorney General and the Deputy Attorney General is carried out through a process defined in the Law of the Public Ministry. The General Law of the Superintendence for the application of trust evaluation tests (Decree 254-2013) is also taken into consideration.

In accordance with the Law of the Public Ministry, the Nominating Board is made up of the following members:

The president of the Supreme Court of Justice.
A Justice of the Supreme Court appointed by the plenary session.
The rector of one of the universities operating in the country.
A representative of the Honduran Bar Association appointed by the board of directors.
The National Human Rights Commissioner.
A representative of the organizations that make up the Alliance for Peace and Justice

The first stage begins with the convening of the Nominating Board. The responsibility for convening the formation of the Nominating Board that will elect the Attorney General lies with the president of the Supreme Court of Justice and not with the president of the National Congress, as is the case with the nominating board that elects the Justices of the Supreme Court of Justice. Justice. When the Board is integrated, the pre-selection stage is carried out. A public call is made for interested parties to submit their application. There is no provision regarding the evaluation method of the applicants, so the Nominating Board has total discretion for the evaluation. Previously, the Board must prepare a regulation, based on which it carries out the pre-selection process.

The General Law of the Superintendency for the application of trust assessment tests establishes that candidates for Attorney General of the Republic and Deputy Attorney General must submit to trust tests.¹⁴ Similarly, in the regulations of the Nominating Board that elected the Attorney General in 2018, it was established that the applicants who had passed the public hearing phase would undergo the trust tests, as well as the socioeconomic test, the patrimonial test, the psychometric, toxicological test and polygraph test.¹⁵

Subsequently, the evaluation phase of the applicants is developed. According to the regulations of the Nominating Board of 2018, the results obtained in the evaluations of professional and personal background, confidence/trust tests and legal knowledge must be taken into consideration. Likewise, it will take into account the content and quality of the work proposals presented at the public hearing, as well as the technical criteria with which said proposals have been defended, and other positive aspects identified in the interview. In addition, disciplinary sanctions were taken into consideration, in the case of public officials, delinquency as a taxpayer and conflicts of interest. Then a list is drawn up with the names of the five candidates proposed by a Nominating Board. This stage concludes with the submission of the list to the National Congress.

14 | General Law of the Superintendence for the application of trust evaluation tests, decree 254-2013, articles 1, 2, 5. See in: <https://www.tsc.gob.hn/web/leyes/Ley%20General%20de%20la%20Superintendencia%20para%20la%20Aplicaci%C3%B3n%20de%20Pruebas%20de%20Evaluaci%C3%B3n%20de%20Confianza.pdf>

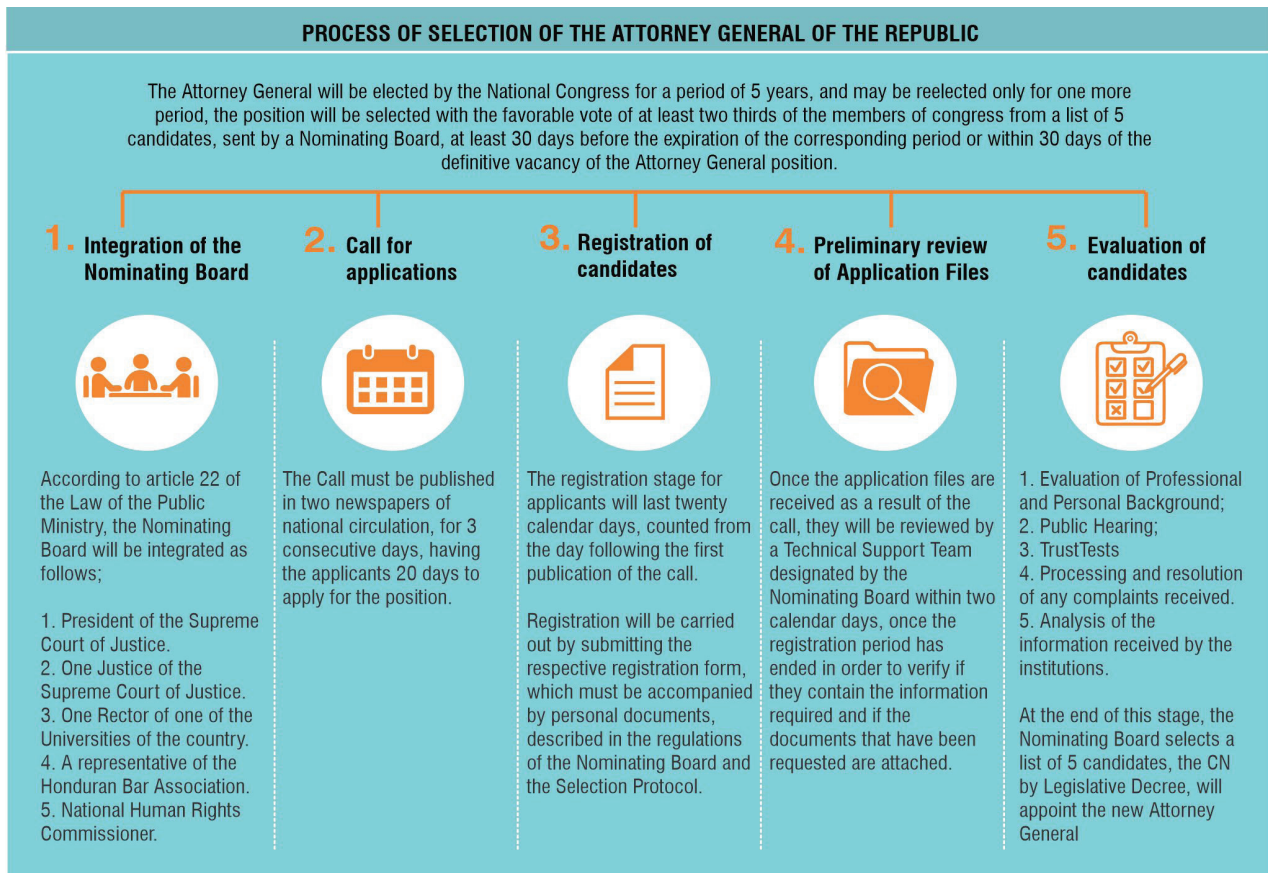
15 | Regulations of the Nominating Board for the selection and presentation of the list of candidates for Attorney General of the Republic and Deputy Attorney General (2018-2013), articles 36 and 37 <https://www.poderjudicial.gob.hn/PSFG/Documents/Informe.pdf>

The law establishes that the Nominating Board must send the list of five candidates to the National Congress at least thirty days before the term of the current Attorney General and Deputy Attorney General ends, or within thirty days after the definitive vacancy in the position.¹⁶

The stages of the process are summarized as follows:

Call indicating requirements
Registration of applicants
Review of registration files or folders
Evaluation of applicants
Public hearings
Trust tests

In a second stage of the process, the National Congress, the entity responsible for electing the Attorney General and the Deputy Attorney General, defines who will occupy these positions. The Law of the Public Ministry regulates that the members of congress have the power to submit to public hearings those nominated by the Nominating Board, prior to the election in plenary session.¹⁷



¹⁶ | Article 22, par. 3 and 4 Law of the Public Ministry, decree 228-93.

¹⁷ | Legislative Decree No. 158-2013, which contains the amendment to the Public Ministry Law of 1993, Decree 228-93, Chapter I, Article 22, consulted at: https://www.tsc.gob.hn/web/leyes/Derogar_decreto_139-2013-Ley_ministerio_publico_2013.pdf

Mechanisms of control and investigation of the background of applicants for public offices in the justice sector

It is important that the entities in charge of the election of high-level public officials in the Justice System have forms to validate the veracity of the documents presented by candidates for high office. There are different ways to validate documents; it can be done by confirming the information with the institutions that issued them, or by means of verification agencies. It is also necessary to validate the skills required for the position, which can be done through an exhaustive analysis of the applicant's professional experience. In the United States, the Bar Association is the entity that carries out this task. Subsequently, the Senate Judiciary Committee interviews the candidates and verifies the information submitted.

EL SALVADOR

In El Salvador there is no specific law on second-tier elections, nor a law that regulates in detail the elections for public office, that regulates an exhaustive investigation of the background or conflicts of interest of the candidates for officials of the justice system. Except for the process of electing Justices to the Supreme Court, which involves some filters, there is no other control and investigation mechanism. The mechanisms to verify the background and the profile are deficient and also unequal, depending on the route by which the person applies.

In the process led by the CNJ, the mechanisms to investigate the background of candidates for public office that have been used to date have been of two types: those related to the competence, trajectory or technical skills of the candidate, and those related to the moral quality of the candidates. However, in both cases there is only detailed regulation of these mechanisms in the phase of the election process carried out by the CNJ. Regarding the process carried out by FEDAES, there is a "Special Regulation for the election of candidates for the Supreme Court who are chosen by lawyers drawn up every 3 years by the board of directors of the Federation of Lawyers of El Salvador", whose provisions establish that the FEDAES Electoral Committee must evaluate the profiles of the applicants so that they can be included in the list of candidates that will be presented at the union's election; however, there have already been cases in which the FEDAES board of directors reverses or modifies any decision of the Electoral Committee, for example, in February 2018, when by decision of the FEDAES board of directors candidates that the Electoral Committee had excluded, were allowed to participate.¹⁸

In the stage carried out by the Legislative Assembly, the effectiveness of the mechanisms to control the background and establish a profile depend on the will of the members of the Political Commission to carry out an election that really allows knowing the personal and professional quality of the candidacies, favoring merit instead of political affinities or vice versa. The RIAL grants a lot of discretion to the Political Commission or the ad hoc subcommission to carry out this verification. The same occurs with regard to the election of the Attorney General, since the process is entirely under the control of the legislative power and there is no rule that establishes the

¹⁸ | Personal interview with the president of the board of directors of FEDAES 2018-2019, Mr. Gregorio Sánchez Trejo.

obligation of an investigation of the candidates. In addition, there is no possibility that civil society or any person in their personal capacity presents objections or oppositions to the candidacies.

GUATEMALA

People who wish to apply for the positions of Justices of the Supreme Court or to apply for the position as Attorney General must go through an application process that entails the investigation of the candidate's profile. As regulated in article 12 of the Nominating Commissions Law, various aspects must be taken into consideration, which entails the presentation of documents.

a. Ethical: Includes matters related to proven morality, honorability, rectitude, independence and impartiality, for which the following must be presented:

1. Proof of being an active member of the bar association;
2. Proof or certification stating the years of practicing law or proof of having served a full period as a Judge of the Court of Appeals or Judge of First Instance, in the case of candidates for Justices of the Supreme Court of Justice or Judges of the Court of Appeals;
3. Submit proof of police record;
4. Submit proof of criminal record;
5. Submit proof of not having been sanctioned by the court of honor of the respective professional association; and,
6. Sworn statement stating that the candidate is in full exercise of his civil and political rights and that he has not been disqualified from holding public office.

b. Academic: Includes everything related to university teaching, academic titles, studies, essays, publications, participation in academic events and merits obtained.

c. Professional: Includes everything related to the professional experience of the applicant, who must meet the requirements established in the Political Constitution of the Republic or applicable laws, depending on the position for which he or she is applying.

d. Human projection: Includes aspects related to the vocation of service and leadership.

The members of the Commission are responsible for verifying that the applicants meet the requirements established by the Constitution and verify that the requirements indicated in the Law of Nomination Commissions are duly verified. As regulated by article 18 of the Law, some of the suitable means to verify records are found in the information provided by the following institutions:

- a. The human resources management of the entities or institutions that the applicant mentions as work history;
- b. The National Civil Police;
- c. The Public Ministry;
- d. The Judicial Branch, through the Records Unit penalties; and,
- e. All the institutions related to the documentation presented by the candidates and the information provided by them.

In the case of candidates for Supreme Court Justices, the information must be requested from the following entities, the list being illustrative and not limiting:

- a. Judicial Career Council;
- b. Board of Judicial Discipline; and
- c. Honor Tribunal of the Bar Association of Guatemala.

It is also indicated that when applicants who are not judges present paperwork to apply for the position of Justice of the Supreme Court or Attorney General of the Republic and Head of the Public Ministry, information may also be requested from the following entities, being a illustrative and non-limiting list:

- a. Honor Tribunal of the Bar Association of Guatemala;
- b. Human Rights Ombudsman ;
- c. Public Ministry Council; and
- d. Council of the Institute of Public Criminal Defense.

Finally, the law states in the aforementioned article that, in any case, the Commission must verify the background of the applicant in any other dependency where the professional has worked. Citizens and civil society organizations can also, at the stage of presentation of objections, point out any impediment of the applicants, who have the opportunity to demonstrate that they meet the legal requirements to hold public office.

HONDURAS

Applicants for high positions within justice institutions undergo an evaluation, investigation and selection process defined by the Nominating/Proposing Boards, which decide which aspects are going to be considered and the documents that must accompany the application.

In the case of the Supreme Court, for the evaluation of the profiles of the self-proposed candidates there is no defined regulation, but it is the Board itself that issues a resolution or regulation where it establishes the steps to follow in the process and the documents that Applicants must submit. In 2015, the Nominating Board, through resolution 1-2015, established that applicants should present twenty-seven documents established in articles 14, 15 and 16 of the aforementioned resolution,¹⁹ to prove that they meet the requirements of the Constitution of the Republic. In the case of the Supreme Court of Justice, the Special Law already obliges them to create the regulations of the aforementioned Law.

All the documents provided by the applicants must be verified by the Nominating Board with the institutions that issued them. During the pre-selection phase, applicants undergo an evaluation of their professional and personal background; then they go to a phase of public hearings and finally they undergo trust tests. As established by Resolution 01-2015 JN, the Nominating Board has the power to request information on the pre-candidates from any public or private, national or international entity. (article 21).

The Board also publishes the list of applicants so that any interested party can denounce or present objections to the candidacies, documenting that they do not meet the suitability requirements to hold the position. If complaints or objections are received against a candidate, the board will transfer them to the applicant so that he can proceed to formulate his defense; if he deems it

19| Resolution 1-2015 of the Nominating Board for the election of Justices of the Supreme Court Articles 14, 15, and 16, available at : <https://portalunico.iaip.gob.hn/assets/docs/mas/GACETA%20JUNTA%20NOMINADORA.pdf>

appropriate, he may request a hearing to make his allegations. If the applicant does not do so, the right to present a defense is considered waived.²⁰

The Nominating Board is empowered to initiate any investigation and review action to verify the veracity of the information presented by the applicants, as well as to order the trust tests that will be carried out by the Superintendence for the application of evaluation and trust tests.²¹

In the case of the election of the Attorney General, the Nominating Board must also issue a regulation in its first session, and through it the requirements and documents that the applicants must present are established. In Resolution 1-2015 of the Nominating Board for the election of Justices of the Supreme Court, candidates were required to submit the following documents:

a. Proof of criminal record;
b. Proof of not having been convicted by a final judgment in the Family, Domestic Violence and Tenancy Courts;
c. Proof of solvency issued by the Superior Court of Accounts;
d. Proof of the State Contracting and Procurement Regulatory Office, to prove that the applicant is not a contractor of the same;
e. Proof from the Superintendence of Public-Private Alliance, to certify that the applicant is not a State concessionaire, attorney, or representative of any of them;
f. Proof from the Honduran Bar Association certifying that the applicant has not been sanctioned or suspended by the Honor Tribunal;
g. Proof from the Comptroller of Notaries of being active, solvent and lacking sanction;
h. Proof from the Supreme Electoral Tribunal that proves that the applicant has not been a member of the Central Board of any of the legally registered Political Parties, during the last five (5) years;
i. Clean record in the Honor Tribunal of the Honduran Bar Association or any other union of which the applicant is a member. The file related to the exercise of Notaries must be free of sanctions by the Supreme Court of Justice and;
j. Not be a member of the management bodies of any legally registered political party;
k. Proof from the Honduran Bar Association certifying that the applicant has not been sanctioned or suspended by the Honor Tribunal;
l. Proof from the Comptroller of Notaries of being active, solvent and not having been sanctioned;
m. Proof from the Supreme Electoral Tribunal certifying that the applicant has not been a member of the Central Board of any of the legally registered Political Parties, in the course of the last five (5) years;
n. Authorization to the Nominating Board to carry out the pertinent investigations. ²²

20| Resolution 1-2015 of the Nominating Board for the election of Justices of the Supreme Court Article 19. Available at : <https://portalunico.iaip.gob.hn/assets/docs/mas/GACETA%20JUNTA%20NOMINADORA.pdf>

21| Resolution 1-2015 of the Nominating Board for the election of the Justices of the Supreme Court of Justice Article 23, 24, 25. Available at : <https://portalunico.iaip.gob.hn/assets/docs/mas/GACETA%20JUNTA%20NOMINADORA.pdf#18,20,21,22>

22| Resolution 1-2015 of the Nominating Board for the election of Judges of the Supreme Court of Justice Articles 14, 15, and 16. Available at : <https://portalunico.iaip.gob.hn/assets/docs/mas/GACETA%20JUNTA%20NOMINADORA.pdf>

The documents must be presented physically before the General Secretariat of the Supreme Court of Justice, the courts of appeals of the Republic and the departmental offices of the National Human Rights Commissioner; and digitally, through the e-mail indicated by the Board in the call. Subsequently, the Board proceeds to review the registration folders within two calendar days, once the registration period has ended, in order to verify if they contain the required information and if the documents requested in the call are attached. If the applicants did not comply with the required documentation, the Board will give them a period of three calendar days to proceed to correct what is indicated by it; if they do not comply, they are excluded from the process.

The Nominating Board can use the sources of information that exist in the country to verify the information contained in the resumes of the aspiring candidates. If a candidate submits documents or statements that are wholly or partially false that help him/her gain an advantage in his/her qualification, he/she is excluded from the process, without prejudice to the criminal or civil liability that this may cause.

In the election process for the 2018-2023 Attorney General and Deputy Attorney General, twenty-two self-proposals and six proposals by Honduran public or private entities were received, of which twenty-five met the requirements, while two were eliminated for not complying with the formal requirements.

Ethical aspects that are taken into consideration for the election of officials in the justice sector

EL SALVADOR

In El Salvador, the Constitution requires in article 176 that people who want to be Justices of the Supreme Court have to demonstrate well-known morality. This quality is also required for the person in charge of the Attorney General's Office. By means of constitutional jurisprudence, it has contributed to giving content to this norm, in relation to what notorious morality implies. In the most recent elections, it has been evaluated based on negative elements that the candidate must demonstrate. Whoever aspires to being a Justice of the CSJ or the FGR must submit solvencies from various control entities, including the Professional Investigation Section of the CSJ, to prove that they do not have pending or expired disciplinary proceedings. In September 2017, the National Council of the Judiciary approved the "Manual for the Selection of Justices and Judges".²³ From that moment on, in the elections of magistrates, a documentary review stage is included, which corresponds to a list of solvencies and certificates that the CNJ requires at the time of publishing the call for candidacies, but also through an increased investigation that this body carried out on both occasions, after having asked the interested persons to sign an authorization so that their background could be investigated.

For the election of Attorney General there is no regulation that provides content or that regulates the way in which morality will be evaluated. Despite its importance, in the election process regulated generically by articles 98 to 101 of the RIAL, nothing is mentioned about ethical aspects of the candidates and even the interviews that the Political Commission or an ad hoc sub commission can carry out. After all, they appear as optional. However, given that in the last decade and a half the jurisprudence of the Constitutional Chamber has established mechanisms so that the second-tier election processes of officials are constitutionally configured, *mutatis mutandis*, the Political Commission generally requests, together with the certificates that demonstrate the professional career of the candidates, who also present solvencies of the public control entities, as well as solvencies of the obligations in the Treasury, the Attorney General's Office, the National Civil Police and penal centers, to rule out the existence of any legal or ethical impediment to being elected.

²³ | CNJ (2017). "Manual for the Selection of Justices and Judges", art. 38 relative to the public announcement and articles 13 to 17, related to the documentation, solvencies and declarations that the people who apply must provide, available at: <https://transparencia.cnj.gob.sv/index.php/marco-normativo/normativa-generada/category/54-normativa-unidad-tecnica-de-seleccion> (Consultado el 31/01/2022).

GUATEMALA

According to the Political Constitution of Guatemala, the ethical aspect must be valued for the holding of any public office (article 113 const.). Specifically, it regulates that, to be a judge or justice, one of the essential requirements is to be a person of recognized honorability (article 207 const.). In accordance with this norm, the Law of Nomination Commissions indicates that in the evaluation of applicants, ethics must be an aspect to consider. However, assessing ethics is one of the most complex tasks, since it is not verified only with the presentation of records that prove no crime has been committed or that taxes have been paid.

The Nominating Commissions have included in the lists of candidates for justices and prosecutors people who, within one year of exercising their position, have had to resign due to being linked to cases of corruption, or due to conflicts of interest. For example, after being appointed by the president, the Attorney General election process was annulled in 2010 because the person elected had serious conflicts of interest. In 2015, three justices elected to the Supreme Court of Justice were linked to corruption cases and had to leave the positions for which they had been appointed a few months earlier. The ethical issue is closely related to conflicts of interest, and it is important that the committees carry out a detailed analysis of the interest of the applicants.

HONDURAS

The ethical aspects taken into consideration for the election of the Justices of the Supreme Court of Justice are not clearly established in the Constitution of the Republic. The Nominating Board for the election of the Justices of the Supreme Court of Justice, as well as the Nominating Board for Attorney General, have the power to require documentation to establish ethical aspects of the applicants.

In relation to the election of the Attorney General, the Law of the Public Ministry establishes as a requirement the being of recognized moral solvency and proven rectitude (article 19, numeral 2). However, it is not stated how that end should be tested. When the regulation that was prepared by the Nominating Board in 2018 was consulted, it does not expressly indicate how that moral solvency and proven rectitude can be accredited. Apparently, some of the documents required by the Proposing Board are aimed at proving that the aspiring Attorney General complies with ethical aspects. For example, an affidavit is requested to prove the following aspects:

REQUIREMEN	ISSUING INSTITUTION
Civil liability for the functional act of the aspiring candidate has not been declared by court.	Supreme Court of Justice
Not having been sanctioned or dismissed from public or private institutions, due to serious disciplinary offense, by means of a firm resolution.	Recommendation or labor record of previous jobs, likewise, certificate issued by the Honduran Bar Association.
Not be in a state of negligent or fraudulent bankruptcy or in a state of insolvency, nor be a delinquent alimony debtor.	Supreme Court of Justice
Not have been sued by the State, nor have pending accounts with it.	Supreme Court of Justice and Attorney General´s Office of the Republic
Not be a delinquent taxpayer, nor have suffered the closure of the business due to non-compliance with its tax and material obligations.	Income Administration Service
Being required by law, not to have failed to present sworn declarations of assets before the Superior Court of Accounts.	Superior Court of Accounts

Psychological or psychometric analysis of the candidates and their evaluation within the election process

EL SALVADOR

This type of evidence is only practiced in the process carried out by the CNJ in the stage that corresponds to it in the process of electing the Justices of the CSJ. Article 37 of the Selection Manual for Justices and Judges provides for a psychological and socio-occupational evaluation to be carried out. The CNJ has specialized professionals to carry out this type of tests, which are mandatory for all candidates in the judicial career. In the evaluation table that constitutes annex IV of the aforementioned manual, this evaluation counts as 10% of the total grade that is awarded to the candidates, so it has an impact on the final result of the selection process. In the process carried out for the people who apply for the FEDAES, these tests are not carried out, nor in the Legislative Assembly for any election official that is the responsibility of the legislative body. Nor are psychological or psychometric tests carried out on applicants for the position of Attorney General, since the election process is carried out directly by Congress.

GUATEMALA

The Law of Nominating Commissions that regulates matters related to the evaluation of applicants for high positions in justice institutions does not establish the obligation to carry out psychological or psychometric tests. In some cases, the commissioners have chosen to evaluate these aspects, in different election processes for candidates for the position of Supreme Court Justices and Attorney General. However, the results have not been made public and have had no impact on the weight assigned to the participants in the election.²⁴

HONDURAS

Applicants for public office in justice institutions must undergo trust tests, which include psychological and psychometric tests, prior to being considered as candidates for the Office of the Attorney General or the Supreme Court of Justice.

Regarding the election of Justices to CSJ, regulation 01-2015 JN states in article 24 that the Nominating Board will request the application of confidence tests, in compliance with articles 2 and 5 of the General Law of the Superintendency for the application of Trust Evaluation Tests, contained in decree 254-2013.

The tests carried out on the candidates for magistrates in the 2016 election were the following: polygraph, psychometric, socioeconomic, medical and toxicological. The results are only known by the members of the Nominating Board, but, according to the Nominating Board, whoever fails the toxicological test is discarded from the process.²⁵

24 | León Evelyn. Soy 502. Aspiring CSJ Justices undergo personality tests. September 10, 2014. <https://www.soy502.com/articulo/aspirantes-magistrados-csj-someten-pruebas-personalidad>

25 | La Prensa, October 15, 2022. Anyone who does not pass a toxicological test cannot be a Justice of the Court. To consulted at : <https://www.laprensa.hn/honduras/el-que-no-pase-prueba-toxicologica-no-podra-ser-magistrado-de-la-NELP890683>

In the case of the Attorney General, as indicated above, they must submit to trust tests that include the following: Socioeconomic, patrimonial, toxicological psychometric test; and polygraph. The result of these tests is confidential, so the members of the Nominating Board will only know the result of the same with the formula “approved”, “failed”, “satisfactory”, “not satisfactory”. These results are analyzed once the trust testing process is completed, determining the reliability or not of the person subject to the tests.²⁶

25| Regulations of the proposing board for the selection and presentation of the list of candidates for Attorney General of the Republic and Deputy Attorney General (2018-2013), Articles 38 to 40, consulted at : <https://www.poderjudicial.gob.hn/PSFG/Documents/Informe.pdf>

Declarations of conflict of interest

EL SALVADOR

Candidates for public office in the justice sector are not required to file a declaration of conflict of interest. There is also no obligation to present them when taking office. The only type of declaration that elected persons present is a declaration of assets, based on the third paragraph of article 240 of the Constitution, which establishes that *“The officials and employees determined by law are obliged to declare the status of their estate before the CSJ”*

GUATEMALA

Candidates for public office in the justice system are not required to file a declaration of conflicts of interest. There is no rule that contemplates this aspect within the election processes. However, due to the fact that civil society has a space during the stage that the nomination commissions develop to supervise the processes of the election of Justices to the CSJ and of the Attorney General, they have the possibility of denouncing the conflicts of interest that may arise. In these cases, the respective Nominating Commission must take seriously the objections regarding conflicts of interest that are pointed out against any of the applicants.

Although the commissions have flexibility and discretion to prepare the profiles and documents required of applicants, they have never required a declaration of conflicts of interest. On some occasions they request proof of not belonging to any political party, which is insufficient.

For people who have been elected through the Nominating Commission procedure, there is a specific prohibition on hiring that they can authorize while they are holding the position for which they were elected. This is a rule contained in the Law to Guarantee the Impartiality of Nomination Commissions, which establishes in article 1 the following: *“It is prohibited for the official who holds a public position of any nature or rank, to hire, appoint or authorize the appointment to work within the institution for which he was elected to any of the members that made up the Commission that nominated him or to their spouses or relatives, within the degrees of law, except that the members of the Nomination Commissions or their relatives within the degrees of law, come to occupy said positions through the opposition procedure once the qualifications, requirements and publications established for that purpose in the Civil Service Law or in the specific laws that regulate said procedure have been completed. Nor will he be able to allocate the subjects listed in this article, service contracts, whether for work or goods, or any form of economic remuneration in the body for which he has been nominated.”*

The Law to Guarantee the Impartiality of Nomination Commissions only has two provisions, and in article 2 it indicates that the magistrates of the Courts who have acted in the Nomination Commissions by constitutional provision are excluded from the norm, although for their relatives the ban applies.

HONDURAS

In Honduras there is no rule that establishes the obligation to present a declaration of conflicts of interest for applicants for the position of Justices for the CSJ. But among the documents required by the Nominating Boards are some that can be used to determine if these conflicts exist. Documents related to any conflict of interest are:

- | |
|--|
| a. a. Proof of the State Contracting and Procurement Regulatory Office, to prove that the applicant is not a contractor of the same; |
| b. Proof from the Superintendence of Public-Private Alliance, to certify that the applicant is not a State concessionaire, attorney, or representative of any of its members; |
| c. c. Proof from the National Electoral Council certifying that the applicant has not been a member of the Central Board of any of the legally registered Political Parties, during the last five (5) years; |
| d. Not be a member of the management bodies of any legally registered political party; |
| e. Sworn statement of not having kinship with any of the stakeholders involved in the election, as provided for in articles 250 and 310 of the Constitution of the Republic |

Despite the requirement of these documents, which are aimed at proving that there is no relationship of dependency or subordination of the applicant to a certain political party, in practice the Justices of the Supreme Court of Justice have been distributed among the traditional parties, National Party and Liberal Party, placing candidates of recognized political affiliation in proportions of 8/7, with the party in power having the majority.

The regulations of the Nominating Board for the election of the Attorney General and Deputy Attorney General of 2015 refer to the declaration of conflicts of interest, aimed at ensuring that the elected candidate does not have any relationship of apparent subordination with a certain political party, employment relationship with individuals who are investigated for crimes of organized crime, or kinship by consanguinity and affinity with persons accused of corruption.

According to article 18 of the regulations, the interested parties must submit, together with the registration form, a sworn statement on those relationships or links that could cause conflicts of interest, such as:

a. Being or having been, in the last five years, legal representative or procedural representative of a natural or legal person investigated or prosecuted for acts of corruption, fraud, organized crime, money laundering, drug trafficking or any other related criminal offense, or lending or having rendered any other substantive support in the interest of this person;

b. Having had, in the last five years, employment relationship with a law firm, consulting company or other service entity in legal or other comparable matters, which represents the interest of politicians, public servants or businessmen, who have been or are being

investigated or prosecuted for acts of corruption, fraud, organized crime, money laundering, drug trafficking or any other related crime;

c. To have been, in the last five years, the legal representative of a national or foreign company contracting with the State of Honduras, whether or not a lawsuit has been filed against the State;

d. Being or having been a partner, shareholder or member of the board of directors of a national or international company contracted with the State of Honduras, whether or not there has been a lawsuit against the State;

e. Having relatives up to the fourth degree of consanguinity or second degree of affinity, who have been prosecuted for acts of corruption, fraud, organized crime, money laundering, drug trafficking or any other related criminal offense;

Actors involved in the election of senior judicial officials

EL SALVADOR

Judiciary of the Supreme Court of Justice (CSJ)

Lawyers' associations: they submit candidacies for the process organized by the FEDAES (art. 53 et seq. of the CNJ Law).

Federation of Lawyers Associations of El Salvador (FEDAES): convenes, verifies candidacies and organizes direct voting process this is done by attorneys members of the Federation, to elect half of the list sent to the Legislative Assembly (art. 186 CN and art. 54 and following of the CNJ Law).

National Council of the Judiciary: summons and carries out the evaluation and election of the candidates (art. 186 CN).

Political Commission of the Legislative Assembly (Art. 98 and following of the RIAL): Reviews documentation, evaluates the candidacies and issues an opinion recommending the people to be elected

Plenary of the Legislative Assembly (art. 131, numeral 19 CN and art. 186 CN): receives documentation and votes to elect the Justices by qualified majority .

Attorney General's Office (FGR)

Political Commission of the Legislative Assembly (Art. 98 et seq. of the RIAL): reviews documentation, evaluates the candidacies and issues an opinion recommending the person to be elected.

Plenary session of the Legislative Assembly (art. 131, numeral 19 CN and art. 192 CN): receives documentation and votes to elect the Attorney General.

In both cases, candidates for public office in these institutions are also actors.

GUATEMALA

In the process of electing senior officials in the institutions of the justice sector, the Nomination Commissions intervene in a first stage, of pre-selection. Subsequently, in the phase of the election itself, the plenary session of Congress intervenes in the case of the Justices, and the president in the case of the Attorney General. The other actors are the applicants themselves.

Justices of the Supreme Court of Justice (CSJ)

The Nomination Commission that directs the election of the Supreme Court is made up, as indicated by the Constitution, with a representative of the rectors of the universities, the deans of the Faculties of Law or Legal and Social Sciences (there are currently 12 study houses with

Faculty of Law), an equivalent number of representatives elected by the General Assembly of the College of Lawyers and Notaries (Bar Association), and an equal number of representatives elected by the Judges of the Court of Appeals (article 215 const.).

For the designation of the representatives of the College of Lawyers and Notaries, all registered lawyers intervene. In the appointment of the representatives of the Judges of the Court of Appeals, all the Judges of the Court of Appeals also participate.

Subsequently, the plenary session of the Congress of the Republic intervenes in the election.

Attorney General and Head of the Public Ministry

The Constitution establishes that the Commission for the Nomination of Attorney General and head of the Public Ministry is chaired by the president of the Supreme Court of Justice and the Judicial Branch. It is also integrated with the president of the College of Lawyers and Notaries (Bar Association); the president of the Honor Tribunal of said College; and by the deans of the faculties of law or legal and social sciences, legally established in the country (article 251 const.). In this case, the academia has a preponderant role. It is the deans of the universities who can directly influence the election of the Attorney General.

At a later stage, the President of the Republic elects the Attorney General from a list of six candidates, presented by the Nominating Commission. In the election that took place in May 2022, the members of the Commission could not reach a consensus on the composition of the list to be submitted to the president and the list only contained five proposals, for which an appeal was filed with the Constitutional Court, which It ruled in favor of the interested parties and the Commission was forced to choose the person with the highest evaluation, in this case being the Acting Attorney General. In this case, a determining actor was the Judges of the Constitutional Court, although at first they were not included in the selection process for the Attorney General.

HONDURAS

Election of Justices of the Supreme Court of Justice

The actors that participate in the election of Justices to the CSJ, in a first stage, are the members of the Nominating Board and in the second, the members of the Multiparty Commission and the president of Congress that appoints it. All the congressmen and congresswomen of the National Congress are also actors in the process, at the moment of voting. Throughout the process, applicants can also be considered as actors in the process.

As indicated above, the Special Law of the CSJ Nominating board establishes in article 5 that the Nominating Board must be composed as follows:

- 1) A proprietary representative and an alternate appointed by the Supreme Court of Justice, elected by the favorable vote of two thirds (2/3) of the Justices, in an extraordinary plenary session;
- 2) A proprietary representative and an alternate from the Honduran Bar Association (CAH), elected in an extraordinary assembly;

-
- 3) The National Human Rights Commissioner (CONADEH), who will designate his alternate;
 - 4) A proprietary representative and an alternate of the Honduran Council of Private Enterprise (COHEP), elected in an extraordinary assembly;
 - 5) A proprietary representative and an alternate of the schools of legal sciences, summoned to an ad hoc assembly by the Rector of the National Autonomous University of Honduras (UNAH), who will be elected with the favorable vote of the simple majority of the teachers present;
 - 6) A proprietary representative and an alternate elected by civil society organizations according to the provisions of the following article; and,
 - 7) A proprietary representative and an alternate of the workers' confederations/ associations, which will be organized in an extraordinary assembly in accordance with its regulations.

Attorney General

In the case of the election of the Attorney General, since the process is divided into two stages, the key actors are the members of the Nominating Board and the plenary session of the National Congress. The Law of the Public Ministry establishes that the Nominating Board is made up of the following members:

The president of the Supreme Court of Justice.
A Justice of the Supreme Court of Justice appointed during a plenary session.
The rector of one of the universities operating in the country.
A representative of the Honduran Bar Association appointed by the board of directors.
The National Human Rights Commissioner.
A representative of the organizations that make up the Alliance for Peace and Justice

Candidates for the position of Attorney General are also considered actors in the process

Brief analysis of cases: violation of the principle of judicial independence in the election of officials

Judicial independence is a citizen's right, which is reflected in independence from the influence of other powers. It is not a right of Judges and Justices, but a human right that guarantees that social conflicts are resolved by impartial courts.

EL SALVADOR

One of the most serious violations of the principle of judicial independence that has occurred in recent years occurred in May 2021, when during the inaugural plenary session of the Legislative Assembly, as stated in the first section of this baseline, when describing the context, the members of the Assembly of the party in power decided to remove without legal grounds, without due motivation or due process, five Justices of the CSJ. That decision violated the Constitution and the procedure established in art. 186 CN and in the Judicial Career Law to dismiss judicial officials. In addition, the people who replaced the deposed officials were appointed immediately, for the simple fact that a party had a qualified majority at that time, without following the process established in art. 186 CN, and in the abundant secondary regulations that regulate the election process of the CSJ and the way to substitute the Justices of the CSJ, when one is absent due to resignation or death, for example. Some of the people named on that occasion had not even previously participated in any CSJ election process, so the elements for a legitimate application were not there, as indicated by several articles of the CNJ Law, such as the art. 59, which verbatim establishes: *"Validity of Applications.- The applications sent to the Legislative Assembly will be valid for three years, in order to fill the vacancies of Justices of the Supreme Court of Justice that arise within the indicated period."*, and art. 186 CN, which establishes that the candidacies must appear in the list chosen by the representative entities of the legal profession or in the list prepared by the CNJ.

GUATEMALA

The guarantee of judicial independence is directly linked to the system for appointing judicial officials and their stability in office. As has been indicated previously, during the last decade in Guatemala the processes of electing Justices, as well as the election of the Attorney General, have been highly questioned. To date there are two criminal investigations known as Parallel Commissions I and II.

Before and during the process of electing Justices in 2014, which was carried out by the Nominating Commissions for the selection of Judges of the Courts of Appeals and the Supreme Court of Justice, a series of irregularities occurred that were denounced by multiple actors, including the Office of the United Nations High Commissioner for Human Rights (OACHNUD) in Guatemala, the International Commission against Impunity in Guatemala (CICIG), the Inter-American Commission on Human Rights (IACHR) and the Human Rights Ombudsman. Despite the complaints and the evidence presented, none of the legal actions prospered, while the process was underway.

After the integration of the courts, the CICIG, together with the Special Prosecutor Against Impunity (FECI) of the Public Ministry, carried out a series of criminal investigations into corruption cases in which some of the Justices of the Supreme Court were involved.²⁷

The seriousness of the accusations against the Justice election processes were investigated by the CICIG and the FECI, which for months analyzed the way in which influential groups and organized crime influenced the nomination commissions, to influence the appointment of Justices to the high courts for the period 2014-2019. This case was criminally denounced and is known as Parallel Commissions I. The Judge in charge of the process has been harassed and threatened with the aim of not advancing the process.

Another paradigmatic case was the election of Attorney General Consuelo Porras in 2018. The Nominating Commission overlooked the fact that she did not meet the suitability and honorability requirements established by the Constitution. Porras was proposed on the list of six candidates, despite having a sanction from the Human Rights Ombudsman for human rights violations. It was later learned that she had plagiarized her doctoral thesis; however, she was not removed from office. Due to her actions, the Department of State of the United States of America (USA) included Consuelo Porras among a list of corrupt officials, for obstruction of justice.²⁸

The start of the COVID-19 epidemic coincided with one of the biggest scandals of interference with justice by criminal groups. In mid-February 2020, an investigation carried out by the Public Ministry came to light in which it was revealed how a powerful politician, Gustavo Alejos, former private secretary of the president Álvaro Colom, set up an operations center to meet with members of congress, commissioners and others aspiring to occupy the highest positions of justice in the country. Those who attended the meetings with Alejos were received with delicate food and fine liquors in an area with a fully equipped bar ready for meetings.²⁹ As a result of the investigation, a criminal complaint was filed, known as Parallel Commissions II, in which 80 percent of the aspiring magistrates, several of the commissioners and other actors are involved.

The Public Ministry denounced as a threat that Congress elects Justices for the period 2019-2024 who do not meet the requirements and merits of capacity, suitability and honesty established in the Constitution. At the same time, it pointed out as a violation the right to judicial independence and the legal principles of legality, security and legal certainty. Requested an injunction against the election of Justices for the 2019-2024 period, which forced the Constitutional Court to grant a provisional injunction and suspend the process of electing Justices of the Supreme Court and Court of Appeals for the third time since the process began in June 2019, and that to date it has not concluded.³⁰

27 | Soy 502. April 16, 2016. "Justices accused of corruption are asked to Resign" "

<https://www.soy502.com/articulo/activistas-piden-renuncia-3-magistrados-senalados-corrupcion>

28 | <https://www.state.gov/united-states-announces-actions-against-seven-central-american-officials-for-undermining-democracy-and-obstructing-investigations-into-acts-of-corruption/>

29 | <https://www.publinews.gt/noticias/2020/02/18/lujos-gustavo-alejos-hospital-internado.html>

30 | <https://www.prensalibre.com/guatemala/justicia/corte-de-constitucionalidad-suspende-eleccion-de-magistrados-que-haria-el-congreso-ultima-hora/>

HONDURAS

Judicial independence has been violated in the Honduran judicial system through the dismissal of Supreme Court Justices. On December 12, 2012, at dawn, the Honduran National Congress dismissed four magistrates from the Constitutional Chamber of the Supreme Court of Justice. Congress justified its decision on the fact that the Justices had been committing administrative irregularities. Some sectors argue that the dismissal of the four magistrates was based on the fact that the constitutional chamber had declared decree 89-2012 unconstitutional, which was aimed at purging the police. The dismissal evidenced a total interference in the independence of the judiciary. In Honduras at that time there was no process designed for the dismissal of Justices, nor was the concept of impeachment recognized in the Constitution.³¹ The Congress was presided over and controlled mostly by the National Party, whose representatives argued that they were empowered to dismiss the Justices because this Congress was in charge of appointing them.

It is worth mentioning that the substitute Justices who were appointed were of recognized affiliation to the National Party. In 2015, the newly elected Justices annulled one of the immovable articles of the Constitution that prohibits presidential reelection, which resulted in President Juan Orlando Hernández (2014-2018), who had been president of the Congress that appointed them in office, to be cleared for re-election and repeat a mandate in the 2018-2022 presidential period.

The Public Ministry has also been affected by the interference of the legislative power. Through legislative decree number 59.2013, the National Congress issues the Special Law of Intervention of the Public Ministry. After the appearance before the National Congress of the Attorney General and Deputy Attorney General, the immediate intervention of the Public Ministry was considered necessary to replace the powers and competencies that the law attributes to the Attorney General of the Republic. This new Board rendered the figures of the Attorney General and Deputy Attorney worthless, since the board assumed their functions for a period of 60 days. The intervention Board of the Public Ministry recommended to the National Congress the resignation of the head of the Public Ministry on June 25, 2013.³² On June 26, 2013, the Deputy Attorney General presented his resignation before the National Congress.³³

Another case that is controversial is that of the dismissal of Attorney General Ramón Ovidio Navarro in 2005. During his term, Navarro presented the withdrawal of fifteen legal cases against former President Rafael Leonardo Callejas, accused of corruption. In the 1990s, the Attorney Navarro was a defender of former President Leonardo Callejas. He was also blamed for obstructing the investigations to establish emblematic cases of corruption of the time, such as “El Gasolinazo”. Attorney General Navarro was in charge of the Public Ministry for only one year.³⁴

On Thursday, June 28, 2018, the National Congress, after completing the public hearings, at the initiative of Congressman Mario Pérez, put to a vote the list that included the Attorney Hermes Omar Moncada as Attorney General and Daniel Arturo Sibrián as Deputy Attorney General. This list did not reach 86 votes in the legislative chamber.³⁵

31 | The Constitutional Chamber was made up of five Justices, of whom the four dismissed were of liberal affiliation, and the only one who retained his position was of nationalist affiliation. Justice Óscar Chinchilla, who was not dismissed, did not accompany his fellow justices in filing the appeal they filed; On the contrary, he later resigned from his position as a Justice to occupy the position of Attorney General of the Republic, a position that he continues to exercise

32 | Proceso Digital, June 26, 2013, « Attorney General Rubí Resigns », retrieved from : <https://proceso.hn/renuncia-fiscal-rubi/>

33 | La Información, June 26, 2013, “Honduran deputy Attorney General resigns to avoid impeachment,” retrieved from : https://www.lainformacion.com/espana/dimite-fiscal-adjunto-de-honduras-para-evitar-juicio-politico_ZEJW4hY2RankgsfQi2ma46/

34 | El Crítico, June 21, 2005. « The time has come for Ramón Navarro ». Recovered from : <https://hondurasbrilla.blogspot.com/2005/06/ramn-ovidio-navarro-tiene-el-pellejo.html>

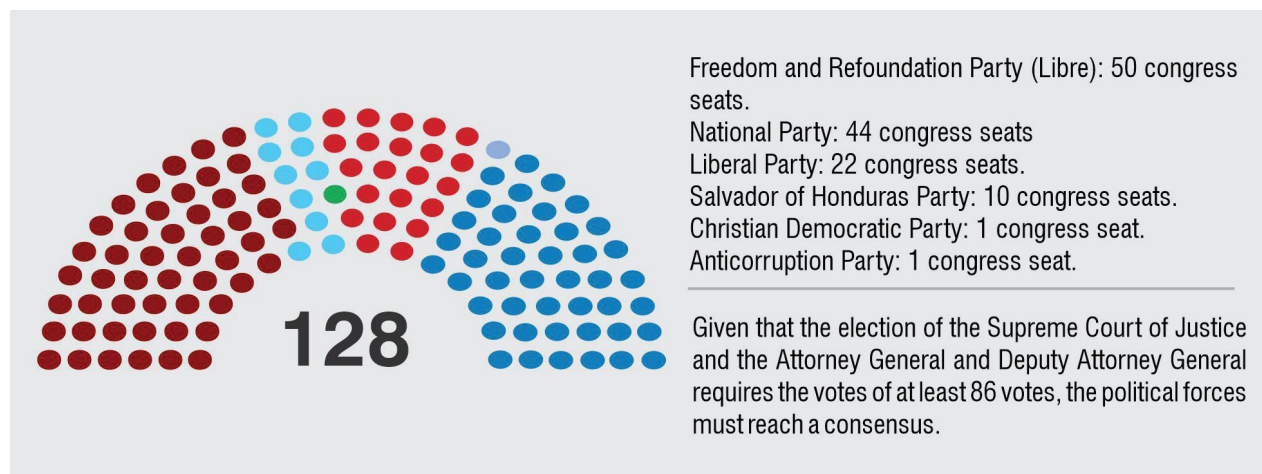
35 | Diario La Prensa (June 30, 2018). « Oscar Chinchilla re-elected as attorney general; Daniel Sibrián as Deputy Attorney General ». retrieved in :

By not obtaining a qualified majority, and the Constitution and the Law of the Attorney General's Office not containing an alternative mechanism (as in the case of the Justices of the Supreme Court of Justice, which mandates that the election be held by secret ballot as many times as possible until obtaining 86 votes), the Congress must put to the vote a new list of two candidates to be appointed to the position, until a qualified majority is obtained.

On June 28, the Congressman of the Christian Democracy Party, Felícito Ávila, presented the motion that proposed Óscar Fernando Chinchilla as Attorney General and Daniel Arturo Sibrián as Deputy Attorney General, which was approved by the vote of 88 members of congress. This election was highly questioned, since Attorney Chinchilla did not submit to the election process and was not on the list of five candidates delivered by the Nominating, unlike Attorney Sibrián, who was on the list.³⁶


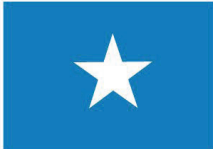


Possible scenarios for the creation of the Supreme Court of Justice for period 2023-2030


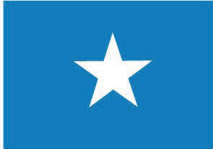


The 2021 elections left as a result that in the National Congress of the Republic none of the political parties took control of this power of the State, being integrated as follows:


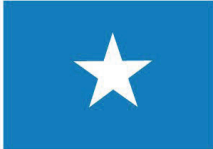




<https://www.laprensa.hn/honduras/oscar-chinchilla-reelecto-como-fiscal-general-daniel-sibrian-fiscal-adjunto-MFLP1192916>
36| Idem.


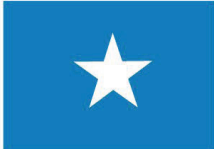
Scenarios for the Supreme Court of Justice Period 2023-2030

SCENARIO 1		
N.º of Justices	Political Party	
7		<p>This is the most likely scenario, considering that there is currently an alliance between the Libre Party and the Salvador of Honduras Party; therefore, the latter will require representation in the Supreme Court of Justice.</p> <p>The National Party cannot be excluded from the process, since even the other political parties together do not reach the required 86 votes; therefore, in exchange for their votes, they may demand a significant share in the composition of the Court.</p>
5		
2		
1		

SCENARIO 2		
N.º of Justices	Political Party	
8		<p>In this scenario, the three main political forces in Congress would share the 15 seats, considering that the 22 members of congress of the liberal party were the first to decide to recognize the Congress Board of Directors chaired by Luis Redondo.</p>
5		
2		
0		

SCENARIO 3		
N.º of Justices	Political Party	
8		<p>This scenario is unlikely, since the Libre Party has questioned bipartisanship and the alliance that has existed between the National Party and Liberal Party over the last 12 years.</p> <p>Likewise, since the National Party is being questioned for acts of corruption, an alliance between Libre and the National Party would damage the image of the Libre Party (Currently in Power).</p>
7		
0		
0		

Scenario for Attorney General and Deputy Attorney General period 2023-2028

SCENARIO 1		
Position	Political Party	
Attorney General		<p>The congressmen and congress women of the, Liberal Party, PSH, PAC and DC only have 84 votes; 2 votes from the National Party are required, but considering that there are only 2 seats in the Public Ministry, it is most likely that they will be occupied by the two majority forces in the National Congress.</p>
Deputy Attorney General		

Pronouncements by the rapporteur on judicial independence and the inter-american system on the election of judicial officers: recommendations

EL SALVADOR

Due to the dismissal of four male Justices and one female Justice of the CSJ during the first plenary session of the new legislature, on May 1, 2021, El Salvador has been the subject of pronouncements by several international human rights entities. This totally anti-democratic act and contrary to the Constitution was condemned by the Inter-American Commission on Human Rights, which decided to install a Timely and Integrated Coordination and Response Chamber (SACROI) for El Salvador, in order to monitor and respond to the human rights situation in the country. Such acts were also condemned by the United Nations High Commissioner for Human Rights, through its Special Rapporteur for the Independence of Justices and Lawyers, Diego García Sayán.

Previously, in 2012, the Rapporteur for the Independence of Justices and Lawyers in office at that time, Gabriela Knaul, visited the country on an official mission and presented a report related to the independence of the CSJ, and in particular of the Constitutional chamber, in which it formulates recommendations related to the election of the CSJ, stating that the appointment of judges and justices must be adjusted to objective and clearly defined criteria in the regulations and in the appointment procedure; the Legislative Assembly should consider the possibility of revising the selection and appointment procedure of the Justices of the Supreme Court, in order to avoid any risk of appointments being made for improper reasons and that transparency and public scrutiny should guide the selection process for CSJ justices through public hearings with citizens, NGOs and other interested parties.

On that occasion, the rapporteur also referred to the process of appointing the person in charge of the Attorney General's Office (FGR). The Rapporteur established in her final report that she considers that giving the Legislative Assembly the power to appoint the head of the FGR could restrict the independence of the candidates and of the Attorney General's Office. In relation to the mandate, the Special Rapporteur considers that the limited duration of the mandate – three years – could prevent them from developing and applying a coherent and uniform policy to strengthen their respective organizations and support the achievement of their institutional objectives.³⁷

³⁷ | Knaul, G. (2013), Report of the Office of the Special Rapporteur on the Independence of Judges and Lawyers. Sub-regional consultation on the independence of the Judiciary in Central America . (A/HRC/23/43/Add.4), pg. 13.

GUATEMALA

In 2014, the United Nations Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, expressed her concern about the process of electing judges, which took place in 2014. She pointed out that “the appeals filed in the course of said processes reveal the loss of legitimacy of the processes, particularly of the final selection of the justices” and requested that the process be repeated.³⁸

The Rapporteurship on judicial independence has repeatedly reiterated the importance of complying with principle 10, which states that it is necessary to establish and apply objective and transparent selection and appointment criteria, based on the merit of the candidates.³⁹

The Office of the Rapporteur has recognized that the Nomination Commission mechanism is politicized: In addition to political parties, groups of businessmen, gangs, and organized crime also seek to influence the members of the Nomination Commissions, such as those of the Bar Association.⁴⁰

In relation to the delay in the election of Justices of the Supreme Court, the Rapporteur stated that: “The State cannot abdicate its responsibilities to make the timely and adequate appointment of the members of the High Courts and must ensure transparency of the procedure.”⁴¹

HONDURAS

The Rapporteur for Judicial Independence openly spoke out against the dismissal of the CSJ Justices in 2012. In this regard, she pointed out that: “*it is a serious attack on democracy in Honduras because due process was not respected*”; she likewise added “*that the improper use of a retaliatory disciplinary procedure against judges is unacceptable*”.⁴²

The rapporteur stated that the dismissal of the justices was a response from the National Congress, based on the fact that the justices had declared decree 89-2012, created to carry out police purges, unconstitutional, pointing out that judges and justices can only be dismissed for reasons such as misconduct or incompetence, after having been subject to due process and with all the guarantees of a fair trial. Therefore, the Honduran authorities were requested to reconsider the dismissal of the four justices.

Rapporteur García Sayán stated regarding the independence of the Judiciary that: “*Honduras must adopt concrete measures that guarantee the independence of the judiciary and protect judges from all forms of political influence with legal norms and clear procedures and objective criteria for appointment, remuneration, tenure, promotion, suspension and dismissal, and disciplinary sanctions in relation to members of the judiciary. Judges need to be protected against conflicts of interest and intimidation.*”⁴³

38 | OACNUDH : “ UN expert urges Guatemala to repeat the selection of justices in a transparent manner ” <https://www.ohchr.org/sp/newsevents/pages/displaynews.aspx?newsid=15145&langid=s>

39 | Kanul, Gabriela. Quote, page 5.

40 | Ídem, page 10.

41 | García-Sayán, Diego. Special Rapporteur on the Independence of Judges and Lawyers. Release. November 19, 2020. <https://news.un.org/es/story/2020/11/1484352>

42 | Office of the High Commissioner for Human Rights (January 29, 2013). « Serious attack on democracy in Honduras the dismissal of justices of the Constitutional Chamber ». Recuperado de: <https://newsarchive.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=12958&LangID=S#:~:text=dijo%20la%20Sra.-,Knaul.,Relatora%20Especial%20de%20la%20ONU>

43 | García-Sayán, Diego. Preliminary report of the official visit of the Special Rapporteur on the Independence of Judges and Lawyers to Honduras, from August 16 to 22, 2019. <https://independence-judges-lawyers.org/es/reports/informe-preliminar-de-la-visita-oficial-realizada-a-honduras->

Regarding the appointment of senior officials, the rapporteur indicated that: *“I urge Congress to consider the possibility of reviewing the procedure for selecting and appointing the justices of the Supreme Court, the Attorney General and his Deputy, in order to avoid any risk of appointments are made for improper reasons. Transparency and public scrutiny should guide the selection process of senior officials of the judiciary and the General Attorney’s Office through transparent procedures that guarantee the participation of society with a view to carefully examining the independence, competence and integrity of the candidates.”*⁴⁴

Recently, the Inter-American Commission on Human Rights (IACHR), together with Rapporteur Diego García-Sayán, issued a statement through which they urge the State of Guatemala to guarantee international standards of independence and impartiality during the selection process for the Attorney General. They expressed that *“the State must conduct a selection process in accordance with the requirements established in the Constitution of the Republic of Guatemala, as well as international standards, in order to guarantee independence and impartiality to ensure the selection of the ideal person to head of the Attorney General’s Office, which contributes to strengthening the justice system and the rule of law.”*⁴⁵

august-22-2019/

44 | *Idem.*

45 | CIDH – UN press releases. “IACHR and UN Special Rapporteur urge Guatemala to guarantee independence and impartiality in the selection of the Attorney General of the Republic.” March 9, 2022. <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/050.asp>

Analysis of strengths and weaknesses of legal and institutional frameworks in the election processes of justice institutions

EL SALVADOR

Election of Justices to the Supreme Court (CSJ)

The process established for the election of justices of the CSJ is widely developed in the regulations and in the jurisprudence. Its design allows the participation of some civil society organizations, such as bar associations. The participation of citizen observation during the course of the process has also been allowed, although this is not established, but rather it is a power of the assembly that favors transparency. In the first stage of the process there are some filters to carry out an objective pre-selection of candidates, but it could be improved to privilege technical mechanisms that guarantee an election based on meritocracy. The jurisprudence issued by the Constitutional Chamber has strengthened the process of electing justices. For example, the prohibition of political party affiliation to access a Justice seat (Inc. 77-97/2013 and Inc. 56-2016).

However, the election process still suffers from some weaknesses. In the first phase, since there are two proposing bodies – the FEDAES and the CNJ – there are two different mechanisms and filters to make up the list of candidates. While to participate in the FEDAES it is enough to meet the requirements established by the Constitution, in the CNJ the applicants undergo a formal evaluation, which includes a background check and a psychological test. Nor in the second phase are there procedures to favor meritocracy, since the Assembly has the power to elect any of the candidates presented on the list. There is no defined profile of the candidates that is known in advance. This situation has affected some election processes and has been pointed out by civil society.

General Attorney's Office (FGR)

In the case of the election of the Attorney General, the process is practically in the hands of political power. As indicated above, the Salvadoran regulations only indicate that the Assembly has the power to appoint the Prosecutor and other officials of the Public Ministry by qualified majority, when they meet the minimum requirements that the Constitution establishes in article 177, the same that are required to the Justices of Appeals. There is no rule or regulation that indicates objective parameters for the election of the Attorney General and any filter is totally optional. Previously it has been verified that in this type of election the political factor weighs. It may consist of an election by a single party, because it has a qualified majority, or it may be part of an unofficial arrangement between several parties to divide up certain institutions whose election corresponds to the Legislative Assembly.

GUATEMALA

In the election of senior officials of the justice system in Guatemala, there is a widely developed regulatory framework, both for the election of the Attorney General and for the election of justices to the Supreme Court of Justice. There is a prior filtering process that is applied through the Nominating Commissions, which then transfer to the electoral body the list of candidates who, in their opinion, have the competencies to hold public office in justice institutions.

If the commissions complied with carrying out an objective and technical evaluation process, the proposed candidates would be the ideal ones. However, it has been shown that the election process has been manipulated by interest groups that claim to have control of justice. The mechanism that was designed to avoid political influence in the election of judicial officials has been perverted, and those who seek impunity have organized themselves to gain control of the system. This has been denounced on multiple occasions by civil society organizations, by citizens and by officials who have been affected by the lack of objectivity in the election processes. As will be described later, in the last decade the commissions have been accused of committing criminal acts, facilitating the appointment of seriously questioned people.

HONDURAS

Election of the Supreme Court of Justice

STRENGTHS	WEAKNESSES
<p>In the regulatory framework for the election of the Supreme Court of Justice (SCJ), it should be noted that the process has a pre-selection stage for candidates through a Nominating Board, created with the purpose of reducing political influence through curriculum evaluation work, application of trust tests, and the consequent preparation of a list of 45 nominated candidates, which the National Congress (CN) will elect to occupy the 15 positions in the CSJ.</p>	<p>Despite the technical and regulatory aspects of the nomination process, there are political elements in the process of forming the Nominating Board that must be taken into account to reduce risks of undue interference and conflicts of interest.</p> <p>These elements are present in the seven sectors in charge of nominating.</p> <ol style="list-style-type: none"> 1. State sector: Supreme Court of Justice and National Human Rights Commissioner, bodies that are appointed by the National Congress and practice has shown that they are related to the ruling party. 2. Union sector: Bar Association. 3. National Commissioner for Human Rights and his/her substitute. 4. Academic sector: Group of law faculties of the universities of Honduras. 5. Private sector: The Honduran Council of Private Enterprise (COHEP) 6. Civil society sector: All civil society organizations duly and legally registered 7. State worker sector, the Confederation of workers.

<p>In the election stage by the Congress of the Republic, a qualified majority (86 votes) is established, which generally prevents an election that responds to the interests of a single political party from being held. As a qualified majority is needed, and if no party can obtain it unilaterally, this forces the parties to reach agreements. In this new election, the parties with the strongest representation in the National Congress are the Libre Party, National Party, Liberal Party and the Salvador de Honduras Party.</p>	
<p>Being the highest court of the Judicial Power, it has constitutional rank, which means that its members have independence in the exercise of their functions and that they enjoy tenure in office.</p>	<p>Being a second-tier election, recent history has shown us that some justices are dedicated to looking after the interests of the party that proposed them, since, in various cases when a member of congress is accused of the possible commission of a crime, the Law determines to appoint a natural judge (justice) who knows about the case, which causes that in some way a conflict of interest arises, since it is the members of congress who appoint the justices of the CSJ. Such is the case of Arca Abierta, one of the many cases denounced by the Support Mission Against Corruption and Impunity (MACCIH).</p>
<p>The Constitution provides that if the plenary session of Congress fails to reach an agreement and the proposed list of 15 justices does not reach the 86 votes required for its approval, the 15 justices will be elected from among the 45 sent by the nominating board, by secret ballot, as many times as necessary until the first 15 obtain the necessary 86 votes.</p>	<p>The secret voting mechanism can be a double-edged sword, since it allows members of congress freedom when casting their vote and not being forced to follow a party line. But the secret ballot mechanism also means that a member of congress can put a price on his/her vote, without pressure from his/her political party.</p>
<p>Articles 1 and 13 of the new Special Law on the Organization and Operation of the Nominating Board for the Proposition of Candidates for Justices of the Supreme Court of Justice expressly recognize the oversight and transparency of the election process for justices of the Supreme Court of Justice (CSJ).</p>	<p>There is no rule that establishes the obligation to present a declaration of conflicts of interest for applicants for the position of justices for the CSJ.</p>

	<p>It is not expressly established how the moral and ethical quality of the candidates required in article 2 of the Special Organizational Law for the Operation of the Nominating Board for the Proposition of Candidates for Justices of the Supreme Court can be accredited. A definition of moral and ethical quality should be established, since both terms fall within the field of the subjectivity of each individual about what is morally correct.</p> <p>In the evaluation matrix, an evaluation of 25% is already determined for personal and professional integrity, where personal and professional conduct will be evaluated with the fulfillment of patrimonial obligations of any kind; this seems to be insufficient to be able to have a comprehensive panorama of a person's behavior. However, union esteem is another point to be valued for personal and professional integrity. Here some familiar points are observed, which have more to do with the previous point and not with union esteem. It is necessary to know how relationships will be evaluated in the labor, contractual and other aspects.</p>
<p>Another strength is that, according to the new Law, the member of the CSJ before the Board will no longer preside over it. This internal election mechanism of the Board will currently be carried out by a draw.</p>	
<p>The Constitution of the Republic and the current Special Law establish a dynamic up to an evaluation matrix to facilitate the work of the Nominating Board. It will correspond to the Board to create an internal regulation that determines the operative work mechanism that it will carry out, always in accordance with the constitution and the new Law.</p>	<p>There are no clear regulations for the election of the members of the nominating board who represent:</p> <ul style="list-style-type: none"> - Civil Society Organizations, although the Special Law of the CSJ nominating board already establishes a somewhat ambiguous procedure, but it is necessary to regulate it for the next elections. - Organization of workers. - Groups of professors of the faculties of law
<p>Currently, the authority of the Nominating Board to nominate candidates for the Supreme Court of Justice has been eliminated; now the people who consider that they meet the minimum requirements present their self-application to the Nominating Board and submit to the process.</p>	<p>In previous processes, the previous law allowed the Nominating Board to propose its candidates before the CSJ. This generated wide favoritism for the Nominating Board and put those who presented their self-applications at a disadvantage.</p>

<p>A favorable aspect that was taken into consideration in the new Law is the issue of gender parity and equity, which allows equal participation of men and women, both in the members that make up the Nominating Board and in the Justices that must be elected by the National Congress.</p>	<p>In the new law, in addition to what has been mentioned, they can receive donations from international human rights organizations and, when necessary, request them from the National Congress.</p>
<p>The Constitution of the Republic establishes that the National Congress will elect from a list of five candidates elected by a Nominating Board, which has the purpose of guaranteeing that the position will be held by a legal professional who has the professional and ethical suitability.</p>	<p>The Constitution does not establish who makes up the Nominating Board and its operation; this is regulated in the Law of the Public Ministry. The Law does not require a qualified majority to be reformed, so prior to the formation of the nominating board it could be subject to reforms so that it can be integrated with sectors related to the party that has a majority in the National Congress..</p>
	<p>As there is no regulated procedure for the election, a temporary rule is followed in the form of a regulation created by the Nominating Board, facilitates the process being manipulated.</p> <p>The Nominating Board is chaired by the president of the Supreme Court of Justice and is also made up of a justice from the same court. Considering that historically the justices of the Supreme Court of Justice are distributed in a proportion of 8 to 7 between the Liberal Party and the National Party, the ruling party in turn has an advantage in decision-making on the board.</p>
	<p>There is no regulated procedure for internal organizations to proceed to appoint their representatives on the Nominating Board, nor the way in which they will propose their candidates to integrate it.</p>

Conclusions

EL SALVADOR

In El Salvador, the responsibility of electing the CSJ justices and the attorney general is an attribution given to the Legislative Congress. Throughout time, for the election of second level officials, political parties have resorted to the distribution of quotas to install in the positions candidates related to or militant of these parties. However, a Congress controlled by a single political party is capable of installing candidates linked to it in these positions, without the need to negotiate or resort to the distribution of quotas.

The closest example occurred in 2021, when the Congress dominated by the party in power imposed 5 justices of the Constitutional Chamber of the CSJ and the Attorney General without following due process, in violation of norms or procedures previously established for elections of this type, thus affecting judicial autonomy and independence.

At the moment, the Legislative Congress does not have profiles or evaluation tables to guide the selection process of candidates for the positions of CSJ justices and attorney general. Despite the fact that different civil society organizations have proposed profiles and scales, these have not been considered by the Legislative Congress and party affinity has continued to be privileged over the capacity and independence of the candidates.

In general, the Legislative Congress does not investigate the professional and personal trajectory of the candidates to occupy the positions of CSJ justices and attorney general. In this way, active militants or donors of political parties have been elected to these positions, which has also affected the independence of the institutions.

In general, the process of electing CSJ justices and the attorney general has been closed to the citizenry. In the absence of profiles, evaluation tables, and investigation reports of the candidates, the citizenry does not know on what merits or capabilities a particular official has been chosen.

Despite the technological advances introduced in the Legislative Congress, these have not translated into greater transparency in these processes.

The participation and incidence of civil society in the election processes of second level officials has been limited. Some organizations with a longer trajectory and permanence in time have built and proposed to the Legislative Congress the use of profiles and evaluation tables or scales; others have closely monitored the selection processes carried out by the FEDAES and the CNJ. Unlike other countries, in El Salvador, neither civil society organizations nor the citizenry in general can propose or challenge a candidacy.

GUATEMALA

In general, the election processes of the authorities of the justice system (Judiciary and Attorney General Office) do not comply with international standards applicable to independence, impartiality, objectivity and absence of external pressures from the electoral body.

The Nominating Commissions system shows a strong erosion, it is no longer a guarantee of independence and selection of the best profiles of people who apply to be part of the justice system.

Universities and trade organizations are no longer a guarantee of independence; there are influences of political and economic networks that influence the appointment of deans who represent the Nominating Commissions.

The role of the Nominating Commission that defined the list of 6 candidates for Attorney General and Head of the Attorney General's Office was excessively formalistic, becoming a paperwork process where only the list of documents presented by the candidates was verified, without verifying their suitability, the logic and coherence of their proposals, their work plan, the allegations of impediments, the evidence presented in defense, their ethics and honorability, a true weighting of the interviews and their merits according to the grading table, giving real value to the psychometric tests.

In the last elections of authorities of the justice system (Judicial Branch and especially the Attorney General), the provisions of Articles 18 and 21 of the Law of Nominating Commissions were not complied with, since no verification procedures were carried out on the background, documents, and indications of the candidates.

Citizen participation is apparent within the nominating commission system, although participation in public hearings, receipt of documents, objections period, all these activities were not binding within the process.

Although there is a period for presenting objections or objections against the candidates, most of them were rejected without any justification and were not considered when pondering the final qualification of the candidates.

HONDURAS

In Honduras, the selection and election processes, both for the 15 Justices of the Supreme Court (SCJ), as well as for the attorney general, are elected by the Legislative Branch, which means that they are highly politicized processes, due to the fact that, within the hemicycle, the political parties represented in the National Congress are divided into quotas and based on this, the number of Justices and Attorney General who represent the main political forces.

Furthermore, in Honduras there is a lack of strong legislation regarding the treatment of conflict of interest, since it is regulated in a superfluous manner, but its applicability is null, which represents an obstacle in this type of selection processes where there may be major conflicts of interest and there is no way to mitigate them due to the lack of legal, technical instruments and other instructive documents.

Although a new Special Law for the Functioning and Organization of the Nominating Board for the Nomination of Candidates for Justices of the Supreme Court was approved. This law has positive aspects (inclusion of gender parity, that the organizations of the board no longer nominate candidates, that the CSJ no longer presides the JN, among others), but also some opportunities for improvement that the legislator should identify for the future.

Historically, since its existence (2001), the nominating board has been intervened or influenced by political groups and third parties interested in having representation in the CSJ, leaving aside in many occasions the technical and constitutional role of the board and orienting it to filter the candidates that will be useful to the political forces that control the National Congress according to the current moment.

The performance of confidence tests (polygraph and toxicology) that are not one hundred percent conclusive represents a detriment to the human rights of the candidates who apply, since the historical scheme of performance in the country, has been through invasive tests to privacy and to violate the right to privacy of the participants, especially in women who participate to be justices and Attorney General .

Recomendations

EL SALVADOR

The Legislative Congress, regardless of who controls it, must make important efforts to comply with the procedures already established or create others that may be necessary to guarantee that the persons elected are the most suitable, giving priority to the merits of the candidates over party affinity. In this way, the autonomy and independence of the institutions could be strengthened.

The Legislative Congress, with the support of other institutions involved in the process and of civil society organizations, should prepare the necessary profiles and evaluation instruments to ensure that the persons elected to these positions have the highest professional and ethical competencies. These instruments will make the election processes more efficient and transparent and will also contribute to the independence of the institutions.

The vetting of candidates for CSJ justices and attorney general should be a key element during the selection process, so it should be regulated so that this is done permanently and is not left to the discretion of the members of congress in each election process, and so that the institutions that are requested to provide information on the candidates collaborate in an expeditious manner.

The use of profiles and evaluation tables in the selection process, as well as that the interviews of the candidates be open to the citizens and other interested parties would make the process more robust and transparent; therefore, it is important that the Legislative Congress use all the means at its disposal (web, TV, radio, social networks, and others) to provide information on the different stages of the process.

Likewise, it is important that all information on the election process be available to any citizen who wishes to consult it. Another element that would strengthen the transparency of the selection process is the regulation of conflict of interest for participating candidates.

In order to strengthen confidence in the selection process for CSJ justices and the attorney general, among others, the Legislative Congress should be open to suggestions or proposals from civil society organizations and evaluate their feasibility and implementation. As in other countries, the participation of civil society organizations during the process could be regulated, allowing them to present proposals for candidates, challenge candidacies, and have the opportunity to ask questions to the candidates during the interview process.

GUATEMALA

The system of Nominating Commissions does not guarantee the independence of both the electing bodies and the elected officials; therefore, for the election of authorities of the justice system, priority should be given to strengthening the prosecutorial and judicial careers, prioritizing specialization, experience, capacity, honorability and performance evaluation mechanisms for attorney general and justices that may prevent political influence in the processes of designation of such authorities.

The Nominating Commissions must comply with the provisions of articles 18 and 21 of the Law of Nominating Commissions and carry out exhaustive verification procedures of the background, documents and accusations against the candidates for Attorney General, which were not carried out in the last election process of Attorney General and Head of the Attorney General's Office.

The electoral bodies must improve their instruments, taking into account international standards for defining the basic profile and the criteria for evaluating the profile of the candidates.

It is necessary to reform the Law of Nominating Commissions to guarantee the right of citizen participation and legal mechanisms that allow the objections and petitions raised by the population to be taken into account by the electoral bodies and, at least, to have mechanisms of challenge and due process.

The system of Nominating Commissions does not guarantee representation of underrepresented populations such as indigenous peoples who have no decision-making space in second call elections such as the election of the Attorney General or authorities of the justice system.

HONDURAS

It is recommended the approval of a law to mitigate conflicts of interest establishing a definition, scenarios, procedure and treatment to be given to them and how to address them through a regulation or complementary instructions. In order for both the nominating and proposing board to know how to address them when they arise during the selection and election of justices and attorney general.

It is necessary to respect the technical work of the nominating board and the proposing board, so that they can adhere to the eminently technical role granted to them by the constitution and the special laws that regulate them. Thus guaranteeing that there will be no interference in the decisions of the boards at the time of filtering, evaluating and nominating the best qualified candidates.

It is recommended to the legislator to fill the legal gaps left by the approval of the Special Law for the Organization and Functioning of the Nominating Board for the Nomination of Justices to the Supreme Court, oriented to the participation of civil society organizations without legal status in the selection processes of the representatives that make up the nominating board, the elimination of inabilities to participate as candidates to active members of political parties and persons convicted for fraudulent crimes, the fact of sharing all the documentation of the nominations once received by the nominating board and that must be delivered to the National Congress the following day, which favors its interference in the process and finally, to strengthen the evaluation matrix, since it has many elements and subjective criteria for the evaluation of the candidates.

It is necessary that the National Congress create a uniform regulation for the laws that regulate both the nominating board and the proposing board, so that it is not left to the discretion of the same to create a temporary regulation. In this sense, the rules must be clear and defined at all times and not that in each process new ones are established according to the indications of the members of the board at that time.

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GUATEMALA

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